

(b) Each large certificated air carrier shall file the applicable schedules of the CAB Form 41 Report with the Civil Aeronautics Board in accordance with the above instructions with the following exceptions:

Section 23—[Amended]

16. Section 23, *Certification and Balance Sheet Elements*, is amended by:

Schedule A—[Amended]

A. Revising paragraph (b) of reporting instructions for Schedule A to read:

(b) The certification of the Form 41 reports, embodied in Schedule A thereof, shall read as follows:

I, the undersigned (Title of officer in charge of accounts) — of the (Full name of the reporting company) — do certify that this report and all schedules and supporting documents which are submitted herewith or have been submitted heretofore as parts of this report filed for the above indicated period have been prepared under my direction; that I have carefully examined them and declare that they correctly reflect the accounts and records of the company, and to the best of my knowledge and belief are a complete and accurate statement, after adjustments to reflect full accruals, of the operating revenues and expenses, income items, assets, liabilities, capital, surplus, and operating statistics for the periods reported in the several schedules; that the various items herein reported were determined in accordance with the Uniform System of Accounts and Reports for Large Certificated Air Carriers prescribed by the Civil Aeronautics Board; and that the data contained herein are reported on a basis consistent with that of the preceding report except as specifically noted in explanations accompanying the financial and statistical statements.

B. Revising the heading of Schedule B-1.1 to read:

Schedule B-1.1—Balance Sheet

C. Revising the heading of Schedule B-43.1 to read:

Schedule B-43.1—Aircraft Inventory Data

SECTION 24—[AMENDED]

17. Section 24, *Profit and Loss Elements*, is amended by:

A. Revising the heading of Schedule P-1.1 to read:

Schedule P-1.1—Statement of Operations

B. Revising the heading of Schedule P-5.1(a) to read:

Schedule P-5.1(a)—Statement of Aircraft Operating Expenses

18. The undesignated center heading now reading *Traffic and Capacity—Route Carriers* is revised to read:

TRAFFIC AND CORPORATE REPORTING REQUIREMENTS

CAB Form 41 Report is amended accordingly, and copies are available at the address given under **FOR FURTHER INFORMATION CONTACT**.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-33847 Filed 12-31-84; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 298

[Reg. ER-1399; Economic Regs. Amdt. No. 30; Docket 41607]

Exemptions for Air Taxi Operations

Editorial Note: FR Doc. 84-33742, published in the Federal Register of Monday, December 31, 1984, renamed Chapter II of Title 14 as follows: "Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings)".

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB reduces reporting requirements to a minimal level for certificated air carriers operating small aircraft in strictly domestic passenger service, and limits the reporting of mail and cargo data on Form 298-C, Schedule T-1 to intra-Alaskan passenger carriers operating only small aircraft. This action also establishes a confidential period of 3 years for the financial data (operating revenues, operating expenses, scheduled passenger revenues, and net income) reported by certificated air carriers on the new Schedule F-1. These actions align the data collected with the Board's data needs in preparation for sunset, while recognizing the post-sunset needs of other Federal agencies that will continue to require aviation data now collected by the Board.

DATES:

Adopted: December 21, 1984.

Effective: January 1, 1985.

The reporting requirements contained in this rule are subject to Office of Management and Budget clearance, which has been granted under clearance number 3024-0009 until September 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Jack M. Calloway or M. Clay Moritz, Jr., Data Requirements, Section, Information Management Division, Office of

Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC. 20428, (202) 673-6042 or after December 31, 1984, Office of Aviation Information Management, Data Requirements and Public Reports Division, DAI-10, Room 4125, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-7372.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPRM) dated July 27, 1983, the Board proposed to (1) remove certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic passenger service from the Part 241 accounting and reporting requirements, and place these carriers under a less extensive Part 298 reporting system, (2) limit the reporting of mail and cargo data on CAB Form 298-C, Schedule T-1 to intra-Alaskan carriers, (3) establish a new report to obtain summary financial data from commuter air carriers² and small certificated air carriers³ and withhold such financial data from public disclosure for a period of three years.

Only thirteen comments including three reply comments were received in response to the rulemaking notice.⁴ The reply comments were filed by RAA, Pilgrim Aviation & Airlines, Inc. (Pilgrim) and Will's Air (Will's). The vast majority of the commenters supported the removal of the certificate carriers operating exclusively with small aircraft from the Form 41 reporting system⁵ and placing them under the Form 298 reporting system;⁶ however,

¹ EDR-465/ODR-26 (48 FR 36601, August 12, 1983).

² Commuter air carrier means an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

³ Small certificated air carrier means an air carrier holding a certificate issued under section 411 of the Federal Aviation Act of 1958, as amended, that only operates aircraft with 60 seats or less or 18,000 pounds maximum payload or less in strictly domestic passenger service.

⁴ Atlantic Air (Atlantic); Britt Airways, Inc. (Britt); Henson Aviation, Inc. (Henson); Mail Airways, Inc. (Mail); USAir, Inc. (USAir); Scenic Airlines (Scenic); Regional Airline Association (RAA); Air Line Pilots Association (ALPA); U.S. Department of Transportation (DOT); and Office of Management and Budget (OMB).

⁵ 14 CFR Part 241.

⁶ 14 CFR Part 298.

most were opposed to the new financial reporting for commuter air carriers. These comments will be discussed below under separate captions.

No objections were received to limit the reporting of mail and cargo data only to intra-Alaskan carriers.

Changes in Reporting Requirements for Small Certificated Air Carriers

RAA and DOT supported the proposal to remove certificated air carriers operating strictly domestic service with small aircraft from the Part 241 reporting system, and placing them under the less extensive Part 298 system. ALPA and USAir opposed parts of the proposal.

Under the proposed rulemaking, small certificated air carriers would be required to file Form 298-C, Schedules A-1 "Report of Flight and Traffic Statistics in Scheduled Passenger Operations," E-1 "Report of Non-scheduled Passenger Enplanements By Small Certificated Air Carriers," F-1 "Report of Financial Data," F-2 "Report of Aircraft Operating Expenses and Related Statistics," and T-1 "Report of Revenue Traffic By On-Line Origin and Destination."

ALPA states that the proposal goes too far because Form 41 Schedules B-1, "Balance Sheet," B-12 "Statement of Changes in Financial Condition," P-1.2 "Statement of Operation," and T-2 "Traffic, Capacity, Aircraft Operation and Miscellaneous Statistics by Type of Aircraft" are necessary for monitoring both the financial condition and safe operation of certificated air carriers operating small aircraft.

USAir on the other hand supports the proposal except the removal of small carriers from the Passenger Origin-Destination (O & D) Survey.⁷ USAir contends that it will be placed in an inequitable competitive position vis-a-vis small carriers if the latter are not required to provide such data. Further, USAir contends that the Board is inconsistent to assert O & D data are needed from larger carriers for the essential air service (EAS) program⁸ while arguing in this case such data are not needed from smaller certificated carriers which have the primary or sole responsibility for this service in many instances.

RAA filed a reply comment opposing USAir. In rebutting USAir's position, RAA states that the great bulk of small aircraft operators were never certificated and consequently were never required to file O & D data in the first place. RAA also states that USAir's competitive argument is limited because

the competition between operators who utilize small aircraft exclusively and larger carriers is not that extensive.

The Board is not persuaded by USAir's competitive argument. USAir will not be at a competitive disadvantage since the smaller carriers will be filing Form 298-C, Schedule T-1 "Revenue Traffic By On-Line Origin and Destination." This schedule is a 100 percent sample on-line origin and destination report rather than a 10 percent sample of flights reported in the O & D Survey.

USAir's argument that is paradoxical to require large carriers to file O & D Survey data for the EAS program but not the smaller ones who are prime participants, is the same as that, raised in the O & D Survey rulemaking.⁹ In that rulemaking, the Board found that it was not inconsistent, and that the O & D Survey data and the T-1 reports provide a comprehensive source of O & D data for the EAS program.

ALPA's contention that the small certificated air carriers should continue filing the Form 41 report for monitoring financial condition and safety, was not supported by DOT. DOT, speaking for FAA, its agency responsible for airline safety, supported the reduced reporting. The Board has found that this reduced reporting will be sufficient to meet the statutory needs after sunset.

Small certificated air carriers have been filing extensive financial information in the Form 41 report, so it would be a rather large reduction in reporting for them. It was stated in the NPRM that the decrease in reporting would be approximately 68 to 81 percent depending on a carrier's size.

Comments of Office of Management and Budget

The collection of information requirements in EDR-465/ODR-26 were submitted to the Office of Management and Budget (OMB) for review. OMB reviewed the proposal under authority granted by the Paperwork Reduction Act of 1980 and 5 CFR Part 1320 and did not approve the changes contemplated in EDR-465/ODR-26. Instead, OMB filed comments in response to the rulemaking notice.

Issues raised by OMB's comments center around the reporting of financial information by small air carriers. The Board interprets OMB's questions to be: (1) Are there less burdensome alternative to recurrent reporting such as voluntary surveys? (2) Does the information have to be publicly disclosed? (3) Do the needs of one

program justify blanketing the industry? (4) Would less detailed or frequent reporting suffice?

Recent experience shows that voluntary surveys do not work. As an example, the Board attempted to monitor the fitness of commuter air carriers through an arrangement with Dun and Bradstreet, whereby these commuter carriers would voluntarily supply limited financial data to Dun and Bradstreet for Board use. This arrangement was terminated because the majority of carriers would not respond to Dun and Bradstreet's inquiries on a voluntary basis.

Besides the apparent reluctance of carriers to voluntarily provide financial information, major problems were encountered concerning the uniformity of information submitted. The financial data that were received differed significantly as to the accounts and accounting treatment and varied widely as to reporting periods. Because of this, the information received could not be used for comparative analyses or as a sample for projection, thereby lessening its utility as an analytical tool. Comparative analyses under a mandatory reporting system are easily made and are used extensively by the Board in its programs.

The Board stated in the proposed rule that it was proposing to maintain this financial information confidential for 3 years. The Board does not, therefore, understand OMB's apparent concern over publicly releasing the information.

OMB expresses concern over making all small carriers file information when all of them are not participating in government programs, such as the guaranteed loan program of the subsidized essential air service program. While the Board understands OMB's concern in this limited area, there were other needs expressed by DOT such as safety, forecasting, airport development, and cost/benefit analysis of proposed rules which affect all carriers.

Finally, OMB questioned whether the financial information could be reported in less detail or less frequently. The Board has cut the reporting requirement to the minimum level, with only four data items requested. They are Total Operating Revenues, Total Operating Expenses, Net Income or (Loss) and Passenger Revenue-Scheduled Service. These categories are about as broad as can be and still be meaningful. For instance, in forecasting or assessing economic impact, operating revenues would be reviewed separately from operating expenses since factors may impact one and not the other. The quarterly frequency for financial data

⁷ 14 CFR 241.19-7.

⁸ 49 U.S.C. 1389.

⁹ ER-1379, 49 FR 14290, April 11, 1984.

fits into the quarterly frequency for the traffic reports (Form 298-C, Schedules A-1 and T-1) that the carriers are already filing.

Based on the above conclusions, the Board has decided to remove certificated air carriers operating only small aircraft in strictly domestic service from the Part 241 reporting requirements. Instead, these carriers will file the less extensive Form 289-C report as proposed in the NPRM.

Requiring Commuter Air Carriers To File Financial Information on Schedule F-1

DOT asked the Board to exercise its authority under section 407(a) of the Act by requiring the reporting of financial information from commuter air carriers. The information sought was Total Operating Revenues, Total Operating Expenses, Passenger Revenues-Scheduled Service and Net Income. The proposed rulemaking stated that the financial information was needed by DOT for forecasting traffic, trust fund revenues, system planning, assessing operations, airport development, safety and equipment acquisition. This is the first time commuter air carriers would be required to file financial information.¹⁰ Heretofore, commuters have been filing only traffic statistics.

RAA, Atlantic, Britt, Henson and Scenic oppose the reporting of financial information by commuter air carriers. Pilgrim and Will's filed reply comments supporting RAA's position. ALPA and DOT filed in support of the proposal. RAA filed comments in rebuttal to DOT. Most of the opposing comments stated that DOT has failed to justify its needs. DOT's needs and other issues raised will be discussed below.

DOT Need—Aircraft Loan Guarantee Program

The proposed rulemaking stated that the financial information is needed for the Aircraft Loan Guarantee Program¹¹ administered by FAA. RAA, Pilgrim, Will's and Henson feel that this program does not justify the need for commuters filing financial data. They state that it is a dying program and that FAA is in a position to know which carrier may be experiencing financial difficulty since it has to waive various covenants in the various mortgages for carriers who do not meet certain loan conditions. Henson also stated that needing data for

the loan guarantee program is "ridiculous" since loan guarantees should only be made to carriers who after financial screening would justify such as investment by the government.

DOT reiterated its need for financial data, stating that it needed the data to perform its responsibilities under the Aircraft Loan Guarantee Program. It stated that at June 30, 1983, there was an outstanding loan balance of \$684 million due through the mid-1990's and that the information would enable FAA to monitor these loans and detect which carriers are experiencing financial difficulties.

RAA, replying to DOT, stated that less than 10 percent of the outstanding loan balance was owned by commuters. At September 30, 1983, there were 31 loans amounting to \$62.5 million that were guaranteed for 17 commuters. RAA argued that the small participation by the commuters does not justify extending a financial reporting requirement to an entire industry.

DOT Need—Forecasting Traffic

Another reason advanced in the rulemaking for needing financial information was traffic forecasting. DOT supported the proposal by restating its position that the financial information will assist in its review of regulations affecting commuter air carriers. According to DOT, the availability of financial data will help to assess the potential industry impact of rulemaking proposals and aid in the formulation of proposals prior to their issuance for comment. DOT believes that this will ultimately save potential commenters and the agency time and money. DOT further states that the information will enable the Department to perform cost/benefit analysis of proposed regulations. Also, DOT states that the information is needed for input to its econometric models which are used to assess other aeronautic needs. These models are used to address such policy issues as what effect changes in costs and/or taxes would have on the demand for aviation activity.

RAA, Pilgrim and Will's feel that the traffic forecasting need has not been justified. RAA states that it fails to understand the relevance of financial information to traffic forecasts. Henson states that the various traffic statistics now being reported on Form 298-C, such as Revenue Passenger Miles, Passengers Enplaned by Station, etc. should provide basic information on economic activity of the airlines. Henson further states that the retrofitting of aircraft example given for the cost/benefit analysis is something so unusual that it appears to be a prefabricated request that does not

merit a response. Henson also stated that the security screening example for assessing economic impact is now ancient history and should not enter the picture.

DOT Need—Estimating Trust Fund Revenues and Airport Development Funds

DOT argues that it needs the financial information for estimating trust fund revenues and airport development funds. Under the Airport and Airway Improvement Act of 1982,¹² DOT is required to publish the status of the existing national airport plan. This plan shall include the type and estimated cost of airport development necessary to provide a safe, efficient, and integrated system of public-use airports to meet the anticipated needs of civil aeronautics and national defense. The FAA is required to report annually to Congress on the research engineering development programs, facilities, and equipment necessary to meet the forecasted needs of civil aeronautics for a 10-year period (section 504(b) of the Act). DOT stated that commuter operations account for about one-third of commercial aircraft activity at airports and, based on current estimates, commuter operations will account for approximately 50 percent in the next 10 years. DOT stated that the proposed financial information is needed for airport and airspace planning to meet the needs of this growing segment of the industry. Finally, DOT stated that financial data from commuters will be helpful in administering the Airport and Airway Trust Fund, which currently has annual receipts in excess of \$1 billion.

RAA, Pilgrim and Will's question the need for financial data to estimate trust funds and airport development funds. They contend that DOT did not justify this need. RAA states that it is ironic that DOT would use the aviation trust fund argument, when DOT and OMB refuse to spend the monies already in the trust fund. It states that information on trust fund taxes collected is provided to the Internal Revenue Service (IRS) and would provide more direct information on trust fund revenues. RAA states that commuter carriers contribute such a small amount to the total trust fund that the new reporting requirements are not justified. Considering the experienced growth in the industry, Henson contends that there is no reason for changing the current method of estimating trust fund

¹⁰ Commuter air carriers were previously requested to submit financial data to Dun and Bradstreet on a voluntary basis; however, the program was terminated due to the poor reporting response and the lack of uniformity in the data received.

¹¹ Pub. L. 85-307.

¹² Pub. L. 97-248, 49 U.S.C. 2201 *et seq.*

revenues using financial data submitted by small certificated carriers.

DOT Need—Safety and Fitness

EDR-465 stated that safety and fitness issues were another need for the reporting of financial data by commuter air carriers. Financial data would allow FAA and the Board to identify financially unstable carriers that may require further surveillance.

RAA (Pilgrim and Will's filed in support of RAA), Mall and Britt oppose the data collection based on safety and fitness. RAA states that the National Transportation Safety Board (NTSB) in extensive studies found no documented relationship between financial health and safety. RAA contends that FAA has wide authority to require substantial financial data from carriers that they suspect of safety violations, so that developing industry-wide reporting to develop information that FAA can already request is unnecessary. RAA also states that the Board's obligation to assure continuing fitness duplicates to a substantial degree FAA's jurisdiction over safety, and will most likely not survive the Board's sunset. In any case, RAA states that through its auditing function and ability to require special reports, the Board can secure such information as it requires from any carrier whose fitness may be at issue.

RAA, Mall and Britt also state that the reporting of financial information by large certificated carriers has not prevented any bankruptcies, protected the consumers or resulted in any decertifications.

Deregulation Versus Regulation

RAA, Atlantic, Britt, Henson and Scenic oppose the reporting of financial information, feeling that since financial information was not required during deregulation, it is not needed in the era of deregulation. Pilgrim and Will's filed reply comments in support of RAA. Pilgrim also stated that obtaining financial information from commuter air carriers for the first time will open the door for other new reporting.

Paperwork Reduction Act of 1980 (PRA)

Mall opposes this new financial reporting because it is contrary to the intent of the Paperwork Reduction Act.

Cost

Atlantic opposes financial reporting on the basis of cost. It states that although the cost of \$1,900 to implement financial reporting and \$1,200 for annual maintenance seems moderate, it is money that a commuter air carrier can better spend elsewhere.

Level of Reporting

Pilgrim feels that the information supplied by small certificated air carriers under the proposed Schedule F-2, "Report of Aircraft Operating Expenses and Related Statistics" and the data provided by carriers participating in section 419 subsidized EAS program in replacement and carrier selection proceedings will provide sufficient data to meet the postsunset need for comparative aircraft operating cost and indirect expenses for small aircraft operations. It opposes any changes in this level of reporting.

Comments of Office of Management and Budget

OMB commented twice to this proposed rule. First it filed comments to the NPRM and asked that the Board do further study in four areas before a final rule was processed. These four areas were analyzed for small certificated air carriers. The Board's comments are included in the preceding caption "Changes in Reporting Requirements for Small Certificated Air Carriers."

Although these four areas are equally applicable to commuter carriers, they will not be repeated in this caption for commuters. Subsequent correspondence from OMB, as discussed in the next paragraph, rendered them moot.

The Board submitted a proposed final rule to OMB on November 2, 1984, for review under the Paperwork Reduction Act of 1980. OMB stated in its letter of November 16, 1984, that—

... By requiring financial data reporting by commuter air carriers, the rule imposes a burden that, in the light of the Airline Deregulation Act of 1978 and the CAB's impending sunset, appears to be unwarranted and without practical utility. The CAB has never required financial data from commuters and yet has administered its fitness program successfully for the past six years. We find no evidence to suggest that the domestic fitness program would benefit from the new collection.

CAB's primary reason for including commuter financial reporting is that the DOT needs the data in order to effectively administer several departmental programs. We find no compelling reason for CAB to adopt this provision six weeks before sunset. DOT has full statutory authority to collect non-duplicative industry data in order to support its ongoing programs. DOT is able to submit an information collection request to OMB for approval under simple administrative procedures which do not even require rulemaking.

We are, therefore, returning the final rule to the CAB for reconsideration for the reasons outlined above.

Based on the arguments raised by the commenters and the recommendation of OMB, the Board is eliminating from the

final rule the requirement that commuter air carriers file financial information. This issue will be deferred to the Department of Transportation for further study.

Confidentiality

The last issue in the proposed rule is the confidentiality issue on the withholding from public disclosure for a period of 3 years, the financial data reported on Schedule F-1 "Report of Financial Data."

RAA, Mall, Atlantic, Britt, Henson and Scenic fear that it would be impossible for the Board to maintain the confidentiality of the financial information reported on Schedule F-1. Pilgrim and Will's supports RAA's reservations, while ALPA opposes granting confidential treatment at all.

RAA, Mall and Pilgrim feel that since the Board admits in the proposed rule that it cannot ensure confidentiality, it would be harmful to many of the small airlines who are privately owned to release their financial information. Scenic is opposed to the release of the data at all. Henson fears that the rules may be changed in the future and allow disclosure of the data, while Britt feels it would be difficult to keep the data confidential. Atlantic is afraid of internal leaks of the data.

The Board is not persuaded by these arguments. Currently, several pieces of information are maintained on a confidential basis¹³ by the Board. There has never been a problem with the release of this data under the Board's guidelines, either with FOIA requests or with internal leaks, and the Board does not contemplate any problems in the future. The Board intends to operate within the proposed guidelines. No one commented that they had any problems with these guidelines. The guidelines could not be changed at the whims of the government, but only with appropriate notice and opportunity for the public to comment.

ALPA commented that withholding individual carrier data from public disclosure for a 3-year period is excessive. ALPA contends that the financial information on Schedule F-1 would lose its competitive value long before the 3 years has expired. ALPA

¹³ International Passenger Origin-Destination Survey data, 14 CFR 241.19-7(d); International Service Segment Data, 14 CFR 241.19-6; monthly Form 41, Schedule P-1(a) "Interim Operations Report," 14 CFR 241.22(b)(3); monthly Form 41, Schedule P-12(a) "Fuel Consumption by Type of Service and Specific Operational Markets," 14 CFR 241.24 (Schedule P-12(a)) and Domestic Service Segment Data By Flight Number and Domestic Belly Service Segment Cargo Data, Board Order 81-12-9.

states that it sees no reason for withholding the information for any period of time, since the financial conditions of these smaller carriers needs to be closely monitored in order to ensure that their operations are safe.

The Board is not persuaded by ALPA's argument. As the Board stated in the proposed rule, the apparent fear that their financial information would be publicly disclosed caused many of the small carriers not to comply previously with the Board's voluntary request for financial information. In this case, the carriers were requested to submit financial data to Dun and Bradstreet. Keeping the information confidential for 3 years would allay this fear.

RAA and Henson recommend that an outside source act as collection agent for the government if the Board finds that it must collect the Schedule F-1 financial data. This, they feel, would help preserve the confidentiality of the data. RAA stated it would consider compiling the information on behalf of the CAB and DOT. Henson on the other hand, stated that the Board should allow a private association to collect and consolidate the information on a voluntary basis. If a carrier fails to supply the information, then they would automatically default to mandatory direct reporting. The private association would provide summary data to the government and communicate the names of any carrier who experienced net operating losses over a specified number of quarters.

The Board does not feel that having an outside organization collect the information is a viable process. As mentioned above, this approach was previously tried without success. The Board feels that this procedure would only serve to establish a middleman and prolong the collection process. Further, the Board feels that an outside organization would not be judged a private collector of information by a court of law, but would probably be considered as acting as an agent for the government. Under these circumstances, anyone could still file a FOIA petition with the government and the private collector.

Based on the above conclusions, the Board has decided to withhold for a period of 3 years, the financial data reported on Schedule F-1 "Report of Financial Data."

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96-354) took effect on January 1, 1981. The Act is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires

regulatory flexibility analyses for rules that, if adopted, will have a "significant economic impact on a substantial number of small entities." Under the Act, both an increase or decrease in the economic impact must be considered by the agency.

In PS-108, 47 FR 49963, November 4, 1982, the CAB established guidelines for determining which airlines are "small businesses" for the purposes of the Regulatory Flexibility Act. Under the Board's definition, a direct air carrier or foreign air carrier will be considered a "small business" for the purposes of the Board's implementation of the Act if it provides air transportation only with small aircraft (up to 60 seats and/or 18,000 pound payload capacity.) The changes in reporting requirements would affect small certificated air carriers since they fit the definition of "small businesses" within the meaning of the Act. The Board concludes that the reduction of reporting requirements for small certificated carriers will not have a significant economic impact within the meaning of the Act.

The Regulatory Flexibility Analysis must include a description of the need, objectives, legal basis for and flexible alternatives to the proposed action. The first three requirements are met by our prior discussion. We have also considered and rejected the alternative approach of voluntary reporting of financial data. This approach was tried by the Board with commuter carriers, but was not effective because only a small percent of the carriers responded, and the information that was collected could not be used for comparative analysis or for forecasting.

In addition, the analysis must include a description of the small entities to which this proposal would apply, the reporting, recordkeeping and compliance requirements of this proposed rule, and any other rules which may duplicate, overlap or conflict with it. For clarity, we will discuss each group of requirements separately.

The first change would reduce the reporting requirements for small certificated carriers. Small certificated air carriers are those air carriers holding a certificate issued under section 401 of the Federal Aviation Act, as amended, that operate only aircraft with less than 60 seats or 18,000 pounds payload solely for domestic passenger service. Presently, these carriers, of which there are approximately 50, are required to use a Board-mandated accounting system and file Form 41 financial and statistical schedules, service segment data and the Passenger Origin-

Destination Survey.¹⁴ An unsubsidized carrier in this group might be required to file as many as 104 schedules each year. If this rule were adopted, small certificated air carriers would file only three quarterly traffic schedules and two quarterly financial schedules, or a total of 20 schedules a year. Under this example, the rule would reduce the reporting burden approximately 80 percent.

The Board already has taken temporary steps to reduce reporting burdens on those carriers. As a transitional measure until the completion of this rulemaking, the Board's Comptroller, under delegated authority,¹⁵ has granted waivers to approximately 50 small certificated carriers to file an abbreviated group of reports that are virtually identical to what is being proposed in this rule. Under this rule, there would be little change for these carriers, and consequently no regulatory burden within the meaning of the Act. As a practical matter, the change would significantly affect only a handful of small certificated carriers.

The second rule change would eliminate the reporting of mail and cargo data by commuter carriers operating scheduled passenger service, except for intra-Alaska carriers. This change would relieve a reporting burden on approximately 125 carriers. This information is no longer required from commuter carriers providing only mail and/or cargo service or from certificated carriers because of the virtual deregulation of domestic cargo transportation by Congress and the Board. The information would still be required from intra-Alaska carriers because the information is needed by the Board to set essential air service levels and section 419 subsidy rates. The continuation of this reporting requirement would not be burdensome, because carriers only have to fill out two columns stating the pounds of cargo and mail carried. Many of these carriers benefit directly from providing this information, because it is used to calculate the amount of subsidy they will receive from the government for providing the service. The Board finds that this proposed change would not have a significant economic impact on a substantial number of small entities.

A large number of programs would benefit from this information collection.

¹⁴ Intra-Alaskan certificated air carriers are exempted from filing the Passenger Origin-Destination Survey.

¹⁵ Section 385.27(c) of the Board's Organization Regulations [14 CFR 385.27(c)].

The Board's transferring programs of subsidy, including essential air service, Alaskan mail rates, and fitness. Other Federal agencies would also benefit including DOT/FAA, National Transportation Safety Board, and the Departments of Commerce and Treasury. These Federal agencies use this information to implement a wide variety of programs.

List of Subjects in 14 CFR Part 298

Air taxis, Alaska, Antitrust, Consumer protection, Insurance and Reporting requirements.

Final Rule

PART 298—EXEMPTIONS FOR AIR TAXI OPERATIONS

Accordingly, the Board amends 14 CFR Part 298, *Exemptions for Air Taxi Operations*, as follows:

1. The authority for Part 298 is:

Authority: Secs. 204, 401, 407, 416, 418, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 771, 91 Stat. 1284; 49 U.S.C. 1324, 1371, 1377, 1388, 1389.

2. The Table of Contents is amended by revising the title of Subpart F and the entries for §§ 298.61, 298.64 and 298.65, and adding new §§ 298.60, 298.62, 298.63 and 298.66 to read:

Subpart F—Reporting Requirements

- Sec. 298.60 General reporting instructions.
- 298.61 Reporting of traffic statistics for scheduled passenger operations.
- 298.62 Reporting of financial data.
- 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.
- 298.64 Reporting of nonscheduled passenger enplanements by small certificated air carriers.
- 298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.
- 298.66 Reporting exemption for State collection of data.

3. Section 298.1 is amended by adding the phrase, "and establishes reporting requirements for small certificated air carriers," and the section is revised to read as follows:

§ 298.1 Applicability of part.

This part establishes a classification of air carriers known as "air taxi operators," provides certain exemptions to them from some of the economic regulatory provisions of Title IV of the Federal Aviation Act and specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in air

transportation in all States, Territories and possessions of the United States.¹ This part also authorizes certificated carriers to provide service with small aircraft as if they were air taxi operators and establishes reporting requirements for small certificated air carriers.

4. § 298.2 is revised by adding a new paragraph (x) to read:

§ 298.2 Definitions.

(x) "Small certificated air carrier" means an air carrier holding a certificate issued under section 401 of the Act that provides scheduled passenger air service within and between only the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands with small aircraft as defined in this section.

5. Subpart F—*Requirement for Filing of Flight Schedules and Reports* is amended by:

A. Revising the title of Subpart F to read:

Subpart F—Reporting Requirements

B. Adding a new § 298.60 to read:

§ 298.60 General reporting instructions.

(a) Each commuter air carrier and each small certificated air carrier shall file with the Civil Aeronautics Board the applicable schedules of CAB Form 298-C "Report of Financial and Operating

¹ Section 401(a) of the Federal Aviation Act of 1958, 49 U.S.C. 1371(a), prohibits any person from engaging in "air transportation" except to the extent that such person is authorized to do so by the Civil Aeronautics Board or other Federal statute.

Air transportation is defined in the Act (see section 101(10) and (21), 49 U.S.C. 1301) to include the carriage by aircraft of persons or property as a common carrier for compensation or hire. This includes carriage by aircraft as a common carrier between places in the same State (a) through airspace outside that State (over other States or the District of Columbia or the open sea or foreign territory) or (b) where such carriage is part of the movement of the passengers or property carried, in interstate, overseas or foreign air commerce. However, operations wholly within the geographic limits of a single State are not considered "air transportation" if in those operations the carrier transports no more than a *de minimis* volume of passengers or property moving as part of a continuous journey to or from a point outside the State. For a further discussion of what constitutes air transportation see the preamble to ER-574, 34 FR 7124.

Air transportation also is defined to include "the carriage of mail by aircraft." Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators in some circumstances under contract with the Postal Service.

This part does not provide exemption from the safety regulatory provisions of the Act which are administered by the Department of Transportation through the Federal Aviation Administration, and air taxi operators in the conduct of their operations must observe all applicable safety standards and requirements.

Statistics for Small Aircraft Operators" as required in this section.

(b) A single copy of the CAB Form 298-C report be filed quarterly with the Office of Comptroller for the periods ended March 31, June 30, September 30 and December 31 of each year to be received on or before May 10, August 10, and February 10, respectively. Due dates falling on a Saturday, Sunday or national holiday will become effective on the first following working day.

(c) All reports should be addressed as follows: Data Administration Division; DAI-20, Room 4123; Office of Aviation Information Management; Research and Special Programs Administration; Department of Transportation; 400 Seventh Street, SW.; Washington, D.C. 20590.

(d) All information included in CAB Form 298-C schedules shall be typed or neatly printed.

(e) CAB Form 298-C schedules can be obtained from the above address or by telephone (202) 426-8847.

C. Amending § 298.61, *Reporting of scheduled passenger operations by commuter air carriers*, by revising paragraphs (a), (b), (c), (d), and (e), and paragraph (f)(6), adding a new paragraph (f)(7) and revising the section heading to read as follows:

§ 298.61 Reporting of traffic statistics for scheduled passenger operations.

(a) Each commuter air carrier and each small certificated air carrier shall file CAB Form 298-C, Schedule A-1, "Report of Flight and Traffic Statistics in Scheduled Passenger Operations" and Schedule T-1, "Report of Revenue Traffic by On-Line Origin and Destination."

(b) Schedules A-1 and T-1 shall be filed quarterly as set forth in § 298.60.

(c) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(d) The information included in this report shall pertain only to flights performed in scheduled passenger service during the quarter for which the report is filed.

(e) Schedule A-1 shall be used to report the total flight and traffic statistics in scheduled passenger operations by commuter air carriers and small certificated air carriers. These statistics should cover only scheduled passenger services and should be compiled in accordance with the instructions below. All statistics shall be reported in whole numbers; do not use decimals.

(f) ***

(6) Column (3) shall show the total number of revenue passengers

transported from the point of on-line origin to the point of on-line destination.

(7) Columns (4) and (5) shall be completed only by intra-Alaskan carriers, and shall reflect the total pounds of cargo and pounds of mail, respectively, transported from the point of on-line origin to the point of on-line destination.

D. Adding a new § 298.62 to read:

§ 298.62 Reporting of financial data.

(a) Each small certificated air carrier shall file CAB Form 298-C, Schedule F-1 "Report of Financial Data." This report shall be filed quarterly as set forth in § 298.60.

(b) Each carrier shall indicate the space provided, its full corporate name and the quarter for which the report is filed.

(c) This schedule shall be used to report financial data for the overall or system operations of the carrier. At the option of the carrier, the data may be reported in whole dollars by dropping the cents. Financial data shall be reported in the following categories:

(1) Line 1 "Total Operating Revenues" shall include gross revenues accruing from services ordinarily associated with air transportation and air transportation-related services. This category shall include revenue derived from scheduled service operations, revenue derived from nonscheduled service operations, amounts of compensation paid to the carrier under section 419 of the Federal Aviation Act and other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, cargo pick-up and delivery charges, and fixed-base operations involving the selling or servicing of aircraft, flying instructions, charter flights, etc.

(2) Line 2 "Total Operating Expenses" shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation services. This category shall include expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the

performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to air transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services shall not be included in this category.

(3) Line 3 "Net Income or (Loss)" shall reflect all operating and nonoperating items of profit and loss recognized during the period except for prior period adjustments.

(4) Line 4 "Passenger Revenues-Scheduled Service" shall include revenue generated from the transportation of passengers between pairs of points which are served on a regularly scheduled basis.

(d) Data reported on this form shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates. Individual carrier financial data withheld from public disclosure may be disclosed by the Board to (1) parties to any proceeding before the Board to the extent such material is relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Board; (2) such persons and in such circumstances as the Board determines to be in the public interest or consistent with its regulatory functions and responsibilities; and (3) agencies and other components of the Federal Government for their internal use only. Aggregate data that does not identify individual carriers may be released prior to the aforementioned time.

E. Adding a new § 298.63 to read:

§ 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.

(a) Each small certificated air carrier shall file CAB Form 298-C, Schedule F-2 "Report of Aircraft Operating Expenses and Related Statistics." This schedule shall be filed quarterly as prescribed in § 298.60. Data reported on this report shall be for the overall or system operations of the air carrier.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) This schedule shall show the direct and indirect expenses incurred in

aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided for "Aircraft Type." "Aircraft Type" refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the three digit code prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material* for the reported aircraft type. (Note: Aircraft of the same type but different cabin configuration may be grouped into a single classification; therefore, carriers are not required to report the fourth digit of an aircraft code indicating cabin configuration.)

(d) Line 1 Direct aircraft operating expenses shall be reported in the following categories:

(1) Line 2 "Flying Operations (Less Rental)" shall be subdivided as follows:

(i) Line 3 "Pilot and Copilot" expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(ii) Line 4 "Aircraft Fuel and Oil" expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.

(iii) Line 5 "Other" expenses shall include general (hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status, which are not provided for otherwise on this schedule.

(2) Line 6 "Total Flying Operations (Less Rentals)" shall equal the sum of lines 3, 4 and 5.

(3) Line 7 "Maintenance-Flight Equipment" shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) Line 8 "Depreciation and Rental-Flight Equipment" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare

parts, and rental expense of flight equipment.

(5) Line 9 "Total Direct Expense" shall equal the sum of lines 6, 7 and 8.

(e) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

(1) Line 11 "Flight Attendant Expense" shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(2) Line 12 "Traffic Related Expense" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(3) Line 13 "Departure Related (Station) Expense" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

(4) Line 14 "Capacity Related Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectible accounts; insurance purchased-general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

(f) Line 15 "Total Indirect Expense" shall equal the sum of lines 11, 12, 13 and 14.

(g) Line 16 "Total Operating Expense" shall equal the sum of lines 9 and 15.

(h) Line 17 "Total Block Hours (Revenue Service)" shall be computed from the time an aircraft first moves under its own power for the purposes of flight in revenue service until it comes to rest at the next point of landing. Data shall be reported by individual aircraft type and total.

(i) Line 18 "Total Departures (Revenue Service)" shall include total takeoffs in revenue service by individual aircraft type and total.

(j) Line 19 "Total Gallons of Fuel Issued" shall include the gallons of fuel used in flight operations related to fuel cost reported in total and by aircraft type on Line 4.

F. Retitling and revising § 298.64.

Requests for extensions of time within which to file reports or for waivers from reporting requirements, to read:

§ 298.64 Reporting of nonscheduled passenger enplanements by small certificated air carriers.

(a) Each small certificated air carrier shall file CAB Form 298-C, Schedule E-1 "Report of Nonscheduled Passenger Enplanements by Small Certificated Air Carriers." This schedule shall be filed quarterly as prescribed in § 298.60.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) Enplaned passenger data shall be provided for each airport served in nonscheduled service. Nonscheduled service includes charter flights and other transportation services not constituting an integral part of services performed pursuant to published flight schedules, but does not include flights performed as extra sections to published flight schedules.

(d) In column 1, carriers shall report the full name of each airport served in nonscheduled service.

(e) In column 2, carriers shall report the three-letter airport code found in the "Official Airline Guide" (OAG). If the OAG contains no three-letter code for a point served by the carrier, a three-letter code will be provided by the Civil Aeronautics Board's Information Management Division upon request.

(f) In column 3, carriers shall report the total nonscheduled passengers enplaned at each airport reported in column 1. This column shall be totaled.

G. Retitling and revising § 298.65, *Reporting exemption for State collection of data, to read:*

§ 298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.

(a) If circumstances prevent the filing of CAB Form 298-C on or before the due date, a written request for an extension may be submitted. Except in cases of emergency, the request must be delivered to the Board's Office of Comptroller in writing at least three days in advance of the due date. The request must state good and sufficient reason to justify the granting of the extension and the date when the reports can be filed. If the request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(b) The Office of Comptroller may waive any reporting requirements contained in § 298.61, § 298.62, § 298.63 and § 298.64 of this part, upon its own initiative or upon written request from any air carrier if the waiver is in the public interest and the request demonstrates that (1) unusual

circumstances warrant such a departure, (2) a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal, and (3) the application of the alternative procedure will maintain or improve uniformity in reporting between air carriers.

H. Adding a new § 298.66 to read:

§ 298.66 Reporting exemption for State collection of data.

(a) The Office of Comptroller may exempt a commuter air carrier from the reporting requirements of § 298.61 of this part if a State government collects the information specified in that section and provides it to the Board by the dates specified. The data provided to the Board in this manner must be at least as reliable as if they were collected by the Board directly.

(b) The Office of Comptroller will provide assistance to any State agency interested in participating in this exemption program.

§ 298.99 [Reserved]

6. Section 298.99 is removed and reserved.

CAB Form 982-C Report is amended accordingly and is available at the address given under **FOR FURTHER INFORMATION CONTACT.**

By the Civil Aeronautics Board:

Phyllis T. Kaylor,
Secretary.

All Members concurred except Member Schaffer who filed the attached concurring in part and dissenting in part statement.

Schaffer, Member, Concurring in Part and Dissenting in Part

I strongly disagree with the decision of the Board's majority to eliminate the requirement that commuter air carriers file financial information. Among the factors cited by the Department of Transportation which support the need to collect financial data is its value in facilitating the Department's monitoring of commuter fitness and safety. It is difficult to imagine a more compelling justification for the requirement that commuter carriers file this kind of information.

While the inclusion of commuter carriers in the financial data collection program represents an expansion of previous requirements, it is clearly warranted by the substantial growth of the commuter industry over the past several years. The need to effectively and efficiently monitor what has become a major segment of the air transportation industry requires the collection of information that will permit

DOT and the FAA to determine whether carriers have sufficient financial resources on hand to ensure compliance with fitness and safety regulations.

The additional burden imposed on the commuter industry is, in my view, extremely small when compared with the vital public benefits which will be derived from the collection of this information.

Gloria Schaffer

[FR Doc. 84-33849 Filed 12-31-84; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 385

[Reg. OR-217; Organization Regs. Amdt. No. 137; Docket 41607]

Delegations and Review of Action Under Delegation; Nonhearing Matters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: In ER-1399, issued simultaneously, the CAB established a three year period of confidentiality for individual carrier financial data reported on CAB Form 298-C, Schedule F-1, "Report of Financial Data." The CAB is delegating to the Chief, Information Management Division, Office of Comptroller, the authority to grant or deny requests for this restricted financial data in accordance with the guidelines contained in ER-1399.

DATES:

Adopted: December 21, 1984.

Effective: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-6042 or after December 31, 1984, Office of Aviation Information Management, Data Requirements and Public Reports Division, DAI-10, Room 4125, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 426-7372.

SUPPLEMENTARY INFORMATION: In ER-1399, also adopted today, the CAB established a procedure to withhold from public disclosure for a three year period, financial data reported by small certificated air carriers on a new CAB Form 298-C, Schedule F-1, "Report of Financial Data." In the same rule the Board also established certain guidelines under which individual air carrier financial data may be released before the end of the confidential period. For the reasons stated in ER-1399, the

CAB delegates authority to the Chief, Information Management Division, Office of Comptroller, to grant or deny requests for data reported by small certificated air carriers on Schedule F-1.

List of Subjects in 14 CFR Part 385

Administrative practice and procedure, Authority delegations.

Final Rule

PART 385—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters*, as follows:

1. The authority for Part 385 is:

Authority: Sec. 102, 204, 401, 402, 403, 407, 410, Pub. L. 85-726, as amended; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1386. Reorganization Plan No. 3 of 1961; 26 FR 5999.

2. Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters*, is amended by adding a new paragraph (j) to § 385.28 to read as follows. The introductory text of the section is shown for the convenience of the user and remains unchanged.

§ 385.28 Delegation to the Chief, Information Management Division, Office of the Comptroller.

The Board delegates to the Chief, Information Management Division, Office of the Comptroller, the authority to:

(j) Grant or deny requests for individual air carrier financial data in accordance with the limitations on the availability of these data contained in paragraph (d) of the reporting instructions for Schedule F-1, which are contained in § 298.62 of this chapter.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-33850 Filed 12-31-84; 8:45 am]

BILLING CODE 6320-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 31

Regulation of Certain Leverage Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Amendments to interim final rules.

SUMMARY: The Commission has determined to amend its interim final rules for certain leverage transactions as

published in the Federal Register on February 13, 1984 at 49 FR 5498, *et seq.*, most of which appear at 17 CFR Part 31 (1984), so as to encompass and accommodate the regulation of the sale of leverage contracts for the delivery of commodities by customers to leverage transaction merchants ("short leverage contracts"). The amendments to the Commission's interim final rules set forth below are essentially technical in nature and generally involve the insertion of conforming language into those rules so as to accommodate the sale of leverage contracts by customers to leverage transaction merchants ("LTMs") and to regulate such short leverage contracts on essentially the same basis as long leverage contracts which the interim rules were initially promulgated to regulate.

EFFECTIVE DATE: These amendments to the interim final rules shall become effective on February 1, 1985.

FOR FURTHER INFORMATION CONTACT: David R. Merrill, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254-9880; Lawrence B. Patent, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254-8955; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254-6990.

SUPPLEMENTARY INFORMATION: On January 18, 1984, the Commission adopted interim final rules which establish a comprehensive regulatory scheme applicable to specified leverage transactions. See 49 FR 5498 (February 13, 1984) for the complete text of the rules. By their terms, these rules as promulgated applied only to the long-term purchase of commodities by leverage customers from LTMs. In particular, § 31.4(w) of the rules defined the term "leverage contract" for purposes of the interim rules to encompass only such commodity purchases by customers (49 FR 5528).

The Commission, in initially proposing the interim rules (including § 31.4(w) substantially in the form adopted), specifically solicited comments on a proposed definition of the term leverage contract. 48 FR 28669 (June 23, 1983). As a result, several commentators raised the issue of whether short sales of leverage contracts should be included in the definition. When the Commission

adopted the interim rules in final form, including § 31.4(w) (which excluded short sales of leverage contracts), it took note of these comments but also indicated that it was generally unaware of any evidence that short sales of leverage contracts were engaged in during any relevant time period, or that such sales were contemplated by Congress to come within the Commission's statutory authority to regulate leverage transactions. 49 FR 5499-5500 (February 13, 1984). At that time, however, the Commission indicated that it would consider the issue further and would seek additional specific public comment concerning short sales in the near future. *Id.*

Shortly thereafter, on March 8, 1984, the Commission in a notice of proposed rulemaking solicited comments concerning whether, and how, the interim final rules could be amended to encompass short sales of leverage contracts. 49 FR 8624. In this notice of proposed rulemaking, detailed and specific comments were sought concerning whether short sales of leverage contracts were contemplated under the Commodity Exchange Act and, if so, what additional customer protections or other amendments to the interim rules would be necessary to accommodate the regulation of the offer and sale of short leverage contracts consistent with the public interest and the anti-fraud, anti-manipulation and financial solvency standards of Section 19 of the Commodity Exchange Act, 7 U.S.C. 23 (1982), which authorizes the Commission to regulate leverage transactions. In this regard, the Commission set forth eleven specific questions upon which it requested comment.

In response to the March 8, 1984 notice of proposed rulemaking, a small number of written comments were received. Subsequently, at a public meeting held on June 12, 1984, the Commission was further advised on the issue of short sales by each of its Operating Divisions. At the conclusion of that meeting, after having reviewed the written comments received in response to its notice of proposed rulemaking and having been advised by its staff, the Commission determined to amend the interim final rules to encompass leverage transactions which provide for the long-term (ten years or longer) sale of commodities by leverage customers to LTM's. The amendments to the interim rules set forth herein will partially accomplish this result.

As noted above, these amendments to the interim rules are generally technical in nature and involve, for the most part,

the insertion of conforming language into the interim rules to encompass short sales. Because of the technical nature of these amendments and because they generally impose no new substantive burdens upon persons to whom they apply, the Commission has determined to adopt these amendments without further public comment and to make them effective within 30 days. In addition to these technical amendments, the Commission is also proposing two substantive amendments and two new rules as additions to the interim final rules to accommodate short sales of leverage transactions and to address related issues. A Notice of Proposed Rulemaking concerning these amendments and additions appears elsewhere in this **Federal Register**.

Should any persons believe themselves to be affected adversely by these technical amendments, they may petition the Commission for relief pursuant to § 31.24 of the interim final rules. (49 FR 5541). In addition, persons wishing to comment on these technical amendments may do so in conjunction with comments submitted concerning the Commission's proposed substantive amendments and additions to the interim rules appearing elsewhere in this **Federal Register**. The Commission will re-evaluate these technical amendments in light of any such comments received.

The following is a brief description of the more significant technical amendments which have been made herein to the interim final rules.

Definition of Leverage Contract

The Commission's definition of a leverage contract contained in § 31.4(w) has been amended to reflect short leverage contracts. Specifically, a new provision concerning carrying charges on short leverage contracts has been added. This provision states that carrying charges are paid by the leverage transaction merchant to the customer on the initial value of the short leverage contract plus any margin deposits made in connection with the contract. This corresponds to the treatment of carrying charges on a long leverage contract. In the case of a long leverage contract, the customer has entered into a purchase contract and has not paid the LTM the contract value but has paid the LTM margin deposits. Thus, the customer is charged carrying charges on the amount owed to the LTM, the unpaid balance. Similarly, on a short leverage contract, the customer has entered into a contract to sell a commodity to an LTM and has not been paid by the LTM for the contract value. In addition, the customer has paid the LTM margin deposits. Thus, the LTM

pays carrying charges to the customer on the amount owed to the customer, the contract value plus margin deposits. In the Notice of Proposed Rulemaking which appears elsewhere in this **Federal Register**, the Commission is proposing that leverage transaction merchants use the same carrying charge rate on short leverage contracts that they use on long leverage contracts.

Two other technical amendments to the definition of a leverage contract have been made to eliminate confusion. First, the adjective "variable" has been added to the provision dealing with carrying charges described above. The current definition provides for periodic payment by the leverage customer or accrual by the leverage transaction merchant of a carrying charge or fee on the unpaid balance of a long leverage contract. When public comment was solicited on this definition in proposed form, several commenters noted that certain firms offered an instrument which permitted customers to fix in advance and prepay all or a portion of the carrying charges associated with the instrument, and that the practice should be permitted to continue. The Commission, when adopting the definition in the interim final rules, did not amend it to allow such practices and, in fact, stated its continuing belief "that the periodic billing of leverage customers for these leverage fees or carrying charges, which purportedly represent charges for interest, storage and insurance, has long been a common characteristic of leverage contracts." (49 FR at 5499 (February 13, 1984)). Nevertheless, some confusion over this provision of the definition of a leverage contract apparently has continued to exist. Thus, the Commission is now explicitly stating in the definition of a leverage contract contained in Rule 31.4(w) the requirement that carrying charges on leverage contracts be variable, rather than fixed in advance and prepaid. This merely codifies the Commission's previous preamble statement in this regard as referred to above.

The final element of the Commission's definition of a leverage contract as originally adopted stated that a leverage contract provides for the "determination of the contract purchase and repurchase prices by the leverage transaction merchant." Rule § 31.4(w)(6). This provision has been expanded to accommodate short leverage contracts.

Other Definitions

The amendments to the definitions of other terms relevant to the interim rules are essentially technical and conforming

in nature, and some of these amendments were referred to in the Commission's proposed rulemaking notice on short leverage contracts. 49 FR 8624 (March 8, 1984). For example, the definition of leverage customer funds in § 1.3(pp) has been amended to include within that definition accruals to a leverage customer who has entered into a short leverage contract. The profit or loss accruing to a leverage customer on a short leverage contract is the LTM's current ask price for the leverage contract subtracted from the bid price of the leverage contract when entered into. If the current ask price exceeds the bid price at initiation, the leverage customer has a loss, and if the current ask price is less than the bid price at initiation, the leverage customer has a profit.¹ Any profit to the leverage customer increases leverage customer funds and, accordingly, increase the amount of funds which the LTM must segregate on behalf of the leverage customer. See § 31.12 and 49 FR 8624, 8626 ("the gain in value in a customer's short position should be required to be segregated on behalf of the customer"). Similarly, the definition of "leverage account equity" in § 31.4(t) has been amended to include a leverage customer's equity based on a short leverage contract. For a long leverage contract, account equity was based on the mark-to-market value of the contract, using the LTM's bid price, less the amount owed to the LTM by the leverage customer. Account equity for a short leverage contract works in reverse—it is based on the amount owed to the leverage customer by the LTM, less the mark-to-market value of the contract using the LTM's ask price.

Several other definitions contained in § 31.4 also required the addition of certain appropriate terms to reflect the fact that they apply in the context of short leverage contracts as well as long leverage contracts. See §§ 31.4(d) (leverage customer); 31.4(g) (leverage commodity); 31.4(h) (ask price); 31.4(i) (bid price); 31.4(l) (carrying charges); 31.4(m) (termination charges); 31.4(o) (repurchase, and now also resale, of a leverage contract); 31.4(p) (delivery) and 31.4(x) (leverage transaction).

¹ An LTM operating with a bid-ask spread will normally be offering to resell a short leverage contract at a higher price than it is offering to enter into a new short leverage contract; that is, the ask price will be higher than the bid price. Therefore, a leverage customer entering into a short leverage contract with such an LTM will accrue a loss equal to the bid-ask spread on the short leverage contract immediately upon entry into the contract. A similar situation occurs upon entry into a long leverage contract.

Moratoria Compliance

The Commission has determined not to amend § 31.5(e), which sets forth the requirements necessary to demonstrate compliance with the Commission's temporary moratoria on leverage transactions set forth in §§ 31.1 and 31.2. Accordingly, an LTM will be permitted to offer a short leverage contract involving any leverage commodity for which it can offer a long leverage contract in accordance with the moratoria. That is, an LTM will not be required to demonstrate separately that it was offering a short leverage contract involving a leverage commodity on which it was offering long leverage contracts in accordance with the moratoria in order to be able to offer the short contract.

Registration of Leverage Commodities, Leverage Transaction Merchants and their Associated Persons

Except for technical amendments to Rule 31.6 which were made to incorporate reference to short sales of leverage contracts in the registration application requirements, no other amendments to this Rule have been made. In view of the Commission's determination that an LTM will not be required to demonstrate that it was engaged in the offering of short leverage contracts as well as long leverage contracts in the commodity for which registration is being sought, separate applications for registration of short and long leverage commodities need not be submitted pursuant to Rule 31.6. However, if short leverage contracts are contemplated in the commodity for which registration is sought and the application does not address the amended requirements of Rule 31.6 for short leverage contracts for the commodity in question, the prospective LTM must supplement its registration application as appropriate.

The Commission has also determined that no changes are necessary with respect to the registration of LTMs or their associated persons as a result of the addition of short leverage contracts, and thus has not amended Parts 3 or 4 of its regulations.

Financial Requirements

As the Commission stated in its proposed rulemaking notice on short leverage contracts, an LTM's purchase of a leverage contract from a leverage customer in a short leverage transaction does not constitute cover for an LTM's obligations to leverage customers under long leverage transactions. 49 FR 8624, 8626. An LTM's cover requirements for its obligations on long leverage

contracts are set forth in § 31.8. Ninety percent of the amount of physical commodities subject to open leverage contracts must be covered, twenty-five percent of the total amount of the LTM obligations must be covered with physicals, and the remainder of the LTM's cover can consist of long futures or in-the-money exchange-traded call option contracts. There can be no physical component for an LTM's cover of short leverage contracts, because it is the leverage customer's obligation to make delivery to the LTM under such a contract, and a long leverage contract cannot cover a short leverage contract. Accordingly, permissible cover for short leverage contracts, which must amount to at least ninety percent of the LTM's obligations on short leverage contracts, is limited to short futures or in-the-money exchange-traded put option contracts. See amended paragraph (a)(3) and new paragraph (a)(3) of § 31.8.

In connection with the amendments to § 31.8 with respect to cover of short leverage contracts, the Commission has amended § 31.12(b) to allow an LTM to use leverage customer funds to obtain permissible cover for short leverage contracts. The Commission has also amended § 1.46 by adding a new paragraph (d)(5) which creates an additional exemption to the general rule requiring the closing out of offsetting long and short positions. Under the new exemption, an LTM can hold open offsetting long and short futures constituting cover of its obligations to leverage customers. This exemption takes account of the fact that an LTM may be simultaneously on the opposite side of similar leverage contracts, some of which are long and some of which are short, and be required to cover these leverage contracts separately by means of offsetting futures contracts. The Commission has also amended Form 2-FR, the financial reporting form for LTMs, to include separate Schedules of Coverage Requirements and Coverage Provided for long and short leverage contracts.² Revised copies of Form 2-FR will be sent to the three firms which have filed applications for registration as an LTM, and other persons interested in receiving a copy may contact the Commission. A copy of the revised form also appears at the end of this release.

The Commission has also made two minor technical amendments to § 31.7 regarding the financial early warning

² LTMs are also reminded that § 31.8(c), which has not been amended, requires them to keep a daily record of required cover and of cover actually maintained in a format identical to the Schedule of Coverage Requirements and Coverage Provided contained in Form 2-FR.

system for LTMs. Since those provisions of § 1.12, the financial early warning system for futures commission merchants and introducing brokers, which are incorporated by reference in § 31.7 are phrased in terms of "applicant or registrant," § 31.7(c) has been amended to make clear that the term leverage transaction merchant should be read into those paragraphs in lieu of "applicant or registrant," rather than "futures commission merchant." The second amendment to § 31.7(c) makes clear that an applicant for registration as an LTM is not required to send early warning notices to the National Futures Association ("NFA"). Since NFA will shortly assume most of the Commission's registration processing functions except for those relating to LTMs and their associated persons, § 1.12 now requires applicants for registration to send a copy of any early warning notice to NFA. See 49 FR 39518 (October 9, 1984) and 49 FR 39593 (October 9, 1984).

The Commission has, at this time, made no amendments to the minimum financial requirements for LTMs (§ 31.9)³ or the financial reporting requirements (§ 31.13).

Disclosure

The Commission has made several technical, conforming changes to the disclosure requirements set forth in § 31.11, which are designed to ensure that a leverage customer receives similar information about long and short leverage contracts. These amendments are contained in the required bold-faced risk disclosure statement set forth in paragraph (a)(1) as well as in paragraphs (a)(5) (i) and (ii) of § 31.11. The Commission also notes that § 31.11(a)(2)(viii) has been amended to require that an LTM's Disclosure Document include a statement to the effect that the LTM may be unwilling to accept delivery and pay for the leverage commodity where metal or bulk coins are involved without first requiring an inspection or assay at the expense of the short leverage customer, and a description of any other requirements applicable to the delivery of a leverage commodity by a leverage customer to an LTM in connection with a short leverage contract. In addition, a new paragraph (k)(2) has been added to § 31.11 which

governs the Confirmation Statement for a short leverage transaction.

To date, Commission Rule 31.11 governing disclosure requires the Disclosure Document to contain an Illustrative Transaction for a long leverage contract that includes the calculation of a break-even price, which indicates the change in price necessary, in absolute and in percentage terms, before a leverage customer can realize a profit on the long leverage contract offered by that LTM. Elsewhere in this Federal Register the Commission is publishing for comment a proposal to delete the illustrative transaction format for a long leverage transaction which is now required by Rule 31.11 to be included in the Disclosure Document, and to substitute a new Confirmation Statement applicable to both long as well as short leverage transactions. Under this proposal, a completed version of this proposed new Confirmation Statement reflecting a sample long leverage transaction would be required to be included in the Disclosure Document employed by LTM offering long leverage transactions. Similarly, the proposal would require LTMs offering short leverage transactions to include in their Disclosure Documents a completed version of this proposed new Confirmation Statement reflecting a sample short leverage transaction. The proposal would also require that the new Confirmation Statement, completed to contain information relating to a customer's long or short leverage contract, be sent by an LTM to a customer subsequent to the customer's entry into such a leverage contract with that LTM.

At this time, the Commission is adopting in final form only certain revisions to the language contained in the bold-faced portion of the risk disclosure statement required by paragraph (a)(1) of Rule 31.11, and a new paragraph (k)(2) of that Rule which requires that a Confirmation Statement for short leverage transactions be sent to customers within 24 hours of the entry into such contracts, including a new bold-faced statement regarding rescission rights for first-time short leverage contract customers. These new requirements contained in paragraph (k)(2) for short leverage contracts generally mirror those currently set forth in paragraph (k)(1) for long leverage contracts. The Commission notes that it would consider an LTM to be in compliance with the requirements of Rule 31.11(a)(3) and (k)(1) and (k)(2) concerning the Illustrative Transaction for long leverage contracts and the

Confirmation Statements for long and short leverage contracts should that LTM, at this time, determine to employ a Confirmation Statement in a format like that proposed elsewhere in this Federal Register and discussed above, and to incorporate such a Confirmation Statement into its Disclosure Document.

Recordkeeping and Reporting to Leverage Customers

The Commission has amended § 31.14 (b)(1), (c)(1), (2) and (3), (d) and (d)(6) of its recordkeeping rule for LTMs to ensure that LTMs will keep appropriate records with respect to short leverage transactions as well as long leverage transactions.

The Commission's amendments to § 31.15 with respect to reporting to leverage customers are designed to ensure that an LTM provides a leverage customer with the same type of statement whenever any leverage contract is closed-out (paragraph (a)), and to ensure that an LTM's monthly statement to a leverage customer includes the same information with respect to long and short leverage contracts (paragraphs (b) (1) and (2)).

The Commission has amended § 31.17(c) of its LTM recordkeeping requirements so that the term "order" will also apply to orders related to short leverage contracts. The Commission has also amended § 31.17(d) to require an LTM's price change register to include bid and ask prices for short as well as long leverage contracts.

Monthly Reporting Requirements

Section 31.16 establishes the form and content of reporting requirements for leverage transaction merchants. Under this rule, LTMs are required to submit monthly reports to the Commission on CFTC Forms 188 and 189. These forms have now been modified to accommodate short leverage contracts. CFTC Form 188 has been divided into two parts for clarity, with CFTC Form 188A being used for long leverage contracts and CFTC Form 188B being used for short leverage contracts. CFTC Forms 188A, 188B, and 189 have been changed to reflect the new name of the Division of Economic Analysis (formerly the Division of Economics and Education). Copies of these amended forms appear at the end of this release.

Elsewhere in this Federal Register the Commission is proposing that LTMs use the same bid and ask prices for long and short leverage contracts.⁴ Should an

³ In a separate release published elsewhere in this Federal Register, the Commission is proposing to amend § 31.9(a) to increase the minimum financial requirement for an LTM by an amount equal to 2.5 percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the LTM which are covered.

⁴ The Commission requested comments on this issue in its notice of proposed rulemaking.

LTM currently be using different bid and ask prices for long and short leverage contracts, that LTM must file two CFTC Form 189s each month, one clearly marked as reflecting prices for long leverage contracts and one marked as applicable to short leverage contracts. Should the bid and ask prices being employed by an FCM be the same for both long and short leverage contracts, that LTM should file a single Form 189 each month.

Margin Calls

The only amendments to § 31.18 regarding margin calls relate to the second proviso in paragraph (b) with respect to re-establishing a leverage position following liquidation. The first amendment permits a short leverage customer to re-establish the position at the then prevailing ask price, which is consistent with a long leverage customer's ability to re-establish at the then prevailing bid price. The Commission has also clarified that rule to make clear that no transaction costs can be assessed in connection with the re-establishment of such a liquidated position. Accordingly, if a termination charge was assessed upon liquidation of the position, such a charge must be rescinded upon re-establishment of the position.

Rescission

Commission Rule 31.23 currently prescribes language in the Disclosure Document stating a customer's right to rescind his first leverage transaction. As noted above, the prescribed language has been modified to accommodate short leverage contracts by the addition of a new § 31.11(k)(2)(i) for short leverage contracts. That section parallels § 31.11(k)(1)(i) for long leverage contracts by providing that actual losses on a short leverage contract are calculated by subtracting the bid price at which the leverage contract was initially sold to the leverage transaction merchant from the bid price at the time of the customer's rescission.

Additional Provisions

The Commission has also amended § 31.10 which generally requires that an LTM may not offer to enter into or enter into long leverage contracts in a commodity at any time that the LTM is not offering to repurchase from its customers any such leverage contracts involving that commodity. The

amendment incorporates short sales into this rule so as to make clear that when an LTM is offering to enter into or entering into short leverage contracts in a commodity with customers, the LTM must, at that time, also be offering to resell any such short contracts in that commodity to its customers. However, an LTM may, of course, be offering to sell or selling long leverage contracts in a commodity without also offering to purchase or purchasing short leverage contracts in that commodity, and vice versa.

Regulatory Flexibility Act

In promulgating the interim final rules, the Chairman, on behalf of the Commission, certified pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that the adoption of the rules would not appear to affect a substantial number of small firms or entities. As a result, the Commission believes that the technical amendments to these rules set forth herein will similarly not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Commission has previously received the approval of the Director of the Office of Management and Budget, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), of the information collection and recordkeeping requirements implemented by the interim final rules. The Commission believes that the technical amendments adopted herein do not significantly increase those information collection and recordkeeping requirements. In any event, since any additional such requirements imposed by these amendments would affect less than ten persons (only three persons or entities have sought registration with the Commission as LTMs under the interim final rules), the requirements of the Paperwork Reduction Act do not apply. See 44 U.S.C. § 3502(4) (1982).

List of Subjects

17 CFR Part 1

Commodity futures.

17 CFR Part 31

Consumer protection, Fraud, Recordkeeping and reporting requirements.

In consideration of the foregoing, and pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12A(5) and 23 (1982), the Commission hereby amends Chapter I of Title 17 of

the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3 is amended by revising paragraph (pp) to read as follows:

§ 1.3 Definitions.

(pp) "Leverage customer funds" means all money, securities and property received, directly or indirectly by a leverage transaction merchant from, for, or on behalf of leverage customers to margin, guarantee or secure leverage contracts and all money, securities and property accruing to such customers as the result of such contracts, or the customers' leverage equity. In the case of a long leverage transaction, profit or loss accruing to a leverage customer is the difference between the leverage transaction merchant's current bid price for the leverage contract and the ask price of the leverage contract when entered into. In the case of a short leverage transaction, profit or loss accruing to a leverage customer is the difference between the bid price of the leverage contract when entered into and the leverage transaction merchant's current ask price for the leverage contract.

2. Section 1.46 is amended by adding paragraph (d)(5) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(d) * * *

(5) Purchases or sales made by a leverage transaction merchant constituting cover of its obligations to leverage customers and made in accordance with §§ 31.8(a) and 31.12(b) of this chapter.

PART 31—LEVERAGE TRANSACTIONS

3. Section 31.4 is amended by revising paragraphs (d), (g), (h), (i), (l), (m), (o), (p), (t), (w), and (x) to read as follows:

§ 31.4 Definitions.

(d) "Leverage customer" means any person who, directly or indirectly, enters into, purchases, sells, or otherwise acquires for value any interest in a leverage contract with, from, or to a leverage transaction merchant;

(g) "Leverage commodity" means a commodity which is the subject of a

concerning the regulation of short leverage contracts (49 FR 8624, 8625 (March 8, 1984)), and the commenters who addressed this issue, including the three applicants for registration as an LTM, generally supported that idea.

leverage contract offered for purchase or sale, or purchased or sold, by a particular leverage transaction merchant, the value of which is reflected in a widely accepted and broadly disseminated commercial or retail cash price series for cash market transactions, which price series reasonably reflects the price for the leverage commodity which the customer can expect to pay or receive in normal commercial or retail market channels, including, if applicable, specified premiums or discounts; each leverage commodity is defined by reference to the following distinguishing characteristics:

(1) For gold and silver bullion and gold and silver bulk coins:

(i) The nominal size, composition and tolerable ranges of the delivery pack or the actual size, composition and tolerable range of the component of the delivery pack;

(ii) Minimum guaranteed quality, deliverable countries of origin, deliverable markings or imprints, and deliverable refiners or mints;

(iii) The method of pricing; and

(iv) The delivery specifications or alternatives including type and location of delivery facilities, packaging, transportation, registration and associated costs.

(2) For platinum, electrolytic copper cathodes, electrolytic copper in wire bars, cakes, slabs, billets, ingots or ingot bars, for lake copper in the same forms, for fire-refined copper in the same forms, and for fire-refined high conductivity copper in ingots or ingot bars, the same distinguishing characteristics as set forth in § 31.4(g)(1) apply.

(3) For Deutsche marks, Japanese yen, Swiss, francs, and British pounds:

(i) The amount and country of origin;

(ii) The delivery specifications or alternatives including:

(A) The manner of delivery and delivery point if hand-to-hand currency;

(B) The manner of delivery, delivery point, bank and branch on which drawn, and type of draft if bank draft; or

(C) The required payment instructions if a deposit to a leverage customer's foreign demand account for a long leverage contract or a deposit to a leverage transaction merchant's foreign demand account for a short leverage contract.

(h) "Ask price of a leverage contract" means the price at which a leverage transaction merchant sells or is willing to sell a long leverage contract to a leverage customer or the price at which a leverage transaction merchant resells or is willing to resell a short leverage contract to a leverage customer:

(i) "Bid price of a leverage contract" means the price at which a leverage transaction merchant purchases or is willing to purchase a short leverage contract from a leverage customer, or the price at which a leverage transaction merchant repurchases or is willing to repurchase a long leverage contract from a leverage customer:

(l) "Carrying charges for a leverage contract" includes all service and interest charges paid periodically by a leverage customer to a leverage transaction merchant, or accrued by a leverage transaction merchant, while a long leverage contract remains open, or all service and interest charges paid periodically by a leverage transaction merchant to a leverage customer, or accrued by a leverage customer, while a short leverage contract remains open;

(m) "Termination charges for a leverage contract" includes all fees and commission payable to a leverage transaction merchant which are associated with the liquidation, repurchase, resale or settlement by delivery on a leverage contract:

(o) "Repurchase or resale of a leverage contract" means the voluntary termination of a leverage contract by mutual agreement between the leverage customer and the leverage transaction merchant, which agreement is effected by entering into a transaction which is the opposite of the initial transaction. A repurchase by a leverage transaction merchant takes place if the initial transaction by the leverage customer was a purchase of a long leverage contract from the leverage transaction merchant, and a resale by a leverage transaction merchant takes place if the initial transaction by the leverage customer was a sale of a short leverage contract to the leverage transaction merchant;

(p) "Delivery on a leverage contract" means the making (in the case of an initial sale by a leverage customer) or taking (in the case of an initial purchase by a leverage customer) of delivery by a leverage customer of the commodity subject to a leverage contract:

(t) "Leverage account equity" means:

(1) For all long leverage contracts in a leverage customer's account, the amount equal to the aggregate value of such leverage contracts in the leverage customer's account, based on the leverage transaction merchant's current bid prices for such contracts, less the amount owed to the leverage transaction merchant by the leverage

customer pursuant to such contracts; and

(2) For all short leverage contracts in a leverage customer's account, the aggregate amount owed to the leverage customer by the leverage transaction merchant pursuant to all such contracts less the amount equal to the value of all such leverage contracts in the leverage customer's account, based on the leverage transaction merchant's current ask prices for such contracts:

(w) "Leverage contract" means a contract, standardized as to terms and conditions, for the long-term (ten years or longer) purchase ("long leverage contract") or sale ("short leverage contract") by a leverage customer of a leverage commodity which provides for:

(1) Participation by the leverage transaction merchant as a principal in each leverage transaction;

(2) Initial and maintenance margin payments by the leverage customer;

(3) Periodic payment by the leverage customer or accrual by the leverage transaction merchant of a variable carrying charge or fee on the unpaid balance of a long leverage contract, and periodic payment or crediting by the leverage transaction merchant to the leverage customer of a variable carrying charge or fee on the initial value of the contract plus any margin deposits made by the leverage customer in connection with a short leverage contract;

(4) Delivery of a commodity in an amount and form which can be readily purchased and sold in normal commercial or retail channels;

(5) Delivery of the leverage commodity after satisfaction of the balance due on the contract; and

(6) Determination of the contract purchase and repurchase, or sale and resale prices by the leverage transaction merchant; and

(x) "Leverage transaction" means the purchase or sale of any leverage contract, the repurchase or resale of any leverage contract, the delivery of the leverage commodity, or the liquidation or rescission of any such leverage contract by or to the leverage transaction merchant.

4. Section 31.6 is amended by revising paragraphs (a), (b), (c) and (f) to read as follows:

§ 31.6 Registration of leverage commodities.

(a) *Registration of leverage commodities.* Each leverage commodity upon which a leverage contract is offered for sale or purchase or is sold or purchased by a particular leverage

transaction merchant must be separately registered with the Commission. Registration will be granted only when the following conditions are, and continue to be, met:

(1) The person requesting registration of a leverage commodity is a registered leverage transaction merchant or is permitted to continue in business pending registration in accordance with § 31.5(c);

(2) The commodity to be registered is a leverage commodity as defined in § 31.4(g);

(3) There exists a widely accepted and broadly disseminated commercial or retail cash price series for the commodity;

(4) The commodity can be readily purchased or sold in normal commercial or retail channels by leverage customers making or taking delivery on a leverage contract; and

(5) The terms and conditions of the leverage contracts based on the leverage commodity are consistent with the Act and the regulations thereunder, and are not contrary to the public interest.

(b) *Application for registration.* Applications to register leverage commodities should be filed with the Commission at its Washington, D.C., headquarters. Attn: Secretariat. Three copies of each such submission should be filed. The Commission may return any application which does not comply with the form and content requirements of this section. Each applicant must:

(1) Provide evidence that the person applying for registration of the leverage commodity is registered, or is permitted to continue in business pending registration in accordance with § 31.5(c), or has applied to the Commission for registration as a leverage transaction merchant;

(2) Provide an explanation of the distinguishing characteristics of the leverage commodity for which registration is sought, including a complete description of the cash market for the leverage commodity, and for the spot, forward, and futures markets for the generic commodity;

(3) Specify a commercial or retail cash price series including prevailing premiums or discounts governing cash market transactions in the quantities specified by the leverage contract and justify the use of such price series with respect to the particular leverage commodity for which registration is sought;

(4) Provide evidence and a complete evaluation of how the distinguishing characteristics of the leverage commodity would be expected to affect the ability of leverage customers electing to make or take delivery of the

commodity at an economic price in normal cash market channels;

(5) Include a description of the commodity inspection and/or certification procedures typically required for commercial or retail sales of the specified commodity. Such description must be accompanied by information regarding the availability of any normally required certification or inspection service at the delivery points including those of the leverage transaction merchant; and

(6) Include copies of all leverage contracts which are to be offered by the leverage transaction merchant on the leverage commodity.

(c) *Continuing registration of leverage commodities.* A registered leverage transaction merchant must be submit to the Commission for its review, at least forty-five (45) days before their effective date, any proposed changes in the specifications of the leverage commodity and the terms and conditions of the leverage contract from those submitted as part of the registration application unless such contract specifically provides that such terms and conditions are subject to change. Three copies of each such submission must be furnished to the Commission at its Washington, D.C., headquarters. Attn: Secretariat. The Commission may return any submission which does not comply with the form and content requirements of this section. Each such submission must, in the following order:

(1) Explain how any such changes might affect the ability of leverage customers to realize the leverage commodity's economic value and how such amendments might affect the ability of leverage customers making or taking delivery to buy or sell the leverage commodity;

(2) Explain the effect of such changes upon the continued appropriateness of the commercial or retail cash price series submitted pursuant to paragraph (b)(3) of this section, or, as an alternative, submit a new price series and a justification of its use; and

(3) Indicate whether, if such changes are applied to existing leverage commodities, there will be a change in the economic value of such commodities and, if so, quantify the extent of such changes.

(f)(1) The Commission hereby delegates to the Director of the Division of Economic Analysis until such time as the Commission orders otherwise, all functions reserved to the Commission in paragraphs (b) and (c) of this section.

(2) The Director of the Division of Economic Analysis may submit any matter which has been delegated to the Director under paragraph (f)(1) of this section to the Commission for its consideration.

5. Section 31.7 is amended by revising paragraph (c) to read as follows:

§ 31.7 Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants.

(c) The requirements of §§ 1.12(c), 1.12(d), 1.12(e) and 1.12(g) of this chapter shall apply to registered leverage transaction merchants and to persons who have applied for registration as leverage transaction merchants, as if in those paragraphs the term "leverage transaction merchant" were substituted for the phrase "applicant or registrant," except that persons who have applied for registration as leverage transaction merchants are not required to send notices required to be filed under this section to the National Futures Association.

6. Section 31.8 is amended by revising paragraph (a) to read as follows:

§ 31.8 Cover of leverage contracts.

(a)(1) Each leverage transaction merchant must at all times maintain cover of at least 90 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers, and must at all times also maintain cover of at least 90 percent of the amount of physical commodities subject to open short leverage contracts entered into with leverage customers. At least 25 percent of the amount of physical commodities subject to open long leverage contracts must be covered by the types of permissible cover set forth in paragraph (a)(2) (i) and (ii) of this section.

(2) Permissible cover for a long leverage contract is limited to:

(i) Warehouse receipts for the leverage commodity subject to the leverage contract held in commercial banks located in the United States or in approved contract market depositories: *Provided*, That the balance of the principal and accrued interest on any loan against such warehouse receipts does not exceed 70 percent of the current market value of the commodity represented by each receipt.

(ii) Warehouse receipts for gold bullion in the case of leverage contracts for bulk gold coins, bulk gold coins in the case of leverage contracts for gold bullion, silver bullion in the case of leverage contracts on bulk silver coins

and bulk silver coins in the case of leverage contracts on silver bullion, which are held in commercial banks located in the United States or in approved contract market depositories: *Provided*, That the balance of the principal and accrued interest on any loans against such warehouse receipts does not exceed 70 percent of the current market value of the commodity for which it represents cover.

(iii) (A) Purchases for future delivery on or subject to the rules of the contract market of the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section; or

(B) Purchase of call commodity options for the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, on or subject to the rules of a contract market in accordance with the provisions of Part 33 of this chapter: *Provided*, That the market value of the actual commodity or futures contract which is the subject of such option is more than the value of the underlying commodity based on the strike price of the option.

(3) Permissible cover for a short leverage contract is limited to:

(i) Sales for future delivery on or subject to the rules of a contract market of the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section; or

(ii) Purchases of put commodity options for the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, on or subject to the rules of a contract market in accordance with the provisions of Part 33 of this chapter: *Provided*, That the market value of the actual commodity or futures contract which is the subject of such option is less than the value of the underlying commodity based on the strike price of the option.

7. Section 31.10 is revised to read as follows:

§ 31.10 Repurchase and resale of leverage contracts by leverage transaction merchants.

(a) No leverage transaction merchant shall offer to sell or sell a long leverage contract involving a leverage commodity to any leverage customer at any time when such leverage transaction merchant is not offering to repurchase from any of its leverage customers any long leverage contract involving the

same leverage commodity previously sold by the leverage transaction merchant to a leverage customer.

(b) No leverage transaction merchant shall offer to purchase or purchase a short leverage contract involving a leverage commodity from any leverage customer at any time when such leverage transaction merchant is not offering to resell to any of its leverage customers any short leverage contract involving the same leverage commodity previously purchased by the leverage transaction merchant from a leverage customer.

8. Section 31.11 is amended by revising paragraphs (a) and (k) to read as follows:

§ 31.11 Disclosure.

(a) Except as provided in paragraph (i) of this section, prior to the opening of a leverage customer account, a leverage transaction merchant soliciting an order for any leverage contract shall furnish to the prospective leverage customer a dated Disclosure Document and receive from such prospective leverage customer a signed and dated copy of the risk disclosure statement contained in such document which acknowledges that the customer received and understood the Disclosure Document. The Disclosure Document shall contain then current information with respect to the leverage contract being offered by the person soliciting the order therefor, and shall contain:

(1) The following bold-faced risk disclosure statement in at least ten-point type on the first page of the Disclosure Document:

BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS AND FOREIGN CURRENCIES, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. THE LEVERAGE CUSTOMER SHOULD BE AWARE THAT THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY PURCHASED BY A CUSTOMER ("LONG LEVERAGE CONTRACT") MUST EXCEED THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. SIMILARLY, THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY SOLD BY A LEVERAGE CUSTOMER ("SHORT LEVERAGE CONTRACT") MUST BE LESS THAN THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. AN ILLUSTRATIVE BREAK-EVEN CALCULATION FOR A LONG

LEVERAGE CONTRACT IS ATTACHED TO THIS DOCUMENT. YOU ARE ENTITLED TO RECEIVE A CALCULATION OF THE BREAK-EVEN PRICE FOR YOUR PARTICULAR LONG LEVERAGE CONTRACT PURCHASE WITH YOUR CONFIRMATION.

YOU SHOULD ALSO UNDERSTAND THAT THE CHARGES FOR SIMILAR LEVERAGE CONTRACTS MAY VARY AMONG LEVERAGE FIRMS, AND THAT SUCH FIRMS HAVE COMPLETE DISCRETION IN SETTING THEIR CHARGES AND THE PRICE OF THE LEVERAGE CONTRACTS THEY OFFER. PRIOR TO ENTERING INTO ANY LEVERAGE CONTRACT A PROSPECTIVE LEVERAGE CUSTOMER SHOULD COMPARE THE CHARGES AND PRICES OF SUCH FIRMS WITH EACH OTHER AND WITH THE COMMISSIONS FOR AND PRICES OF FUTURES CONTRACTS TRADED ON DESIGNATED EXCHANGES.

YOU SHOULD ALSO BE AWARE THAT YOU ARE SUBJECT TO MARGIN CALLS. THE LEVERAGE FIRM RESERVES THE RIGHT TO LIQUIDATE YOUR POSITION IF YOU DO NOT RESPOND TO A MARGIN CALL WITHIN THE TIME SPECIFIED IN YOUR LEVERAGE AGREEMENT. IN ANY EVENT, IF THE EQUITY IN YOUR CONTRACT AT ANY TIME FALLS BELOW 50% OF THE MINIMUM MARGIN, YOUR CONTRACT MAY BE LIQUIDATED WITHOUT PRIOR NOTICE. YOU MUST, HOWEVER, BE NOTIFIED OF LIQUIDATION WITHIN NO MORE THAN 24 HOURS THEREAFTER AND PERMITTED TO REESTABLISH YOUR CONTRACT FOR A PERIOD OF 5 BUSINESS DAYS. LEVERAGE CONTRACTS PURCHASED FROM A LEVERAGE TRANSACTION MERCHANT ARE RE-ESTABLISHED AT THE THEN PREVAILING BID PRICE AND LEVERAGE CONTRACTS SOLD TO A LEVERAGE TRANSACTION MERCHANT ARE RE-ESTABLISHED AT THE THEN PREVAILING ASK PRICE WITHOUT COMMISSIONS, FEES OR OTHER MARK-UPS OR CHARGES UNDER RULES SET BY THE COMMODITY FUTURES TRADING COMMISSION, AS MORE COMPLETELY DESCRIBED IN THIS DISCLOSURE DOCUMENT. IN CASE OF LIQUIDATION, ALL OF YOUR FUNDS MAY BE USED TO SETTLE THE DEFICIT IN THE ACCOUNT, AND YOU MAY BE LIABLE FOR ADDITIONAL FUNDS TO SETTLE IN FULL.

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING THE DAY OF RECEIPT OF THE CONFIRMATION.

YOU SHOULD BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM A LONG LEVERAGE CONTRACT, THE LEVERAGE TRANSACTION MERCHANT WHICH SOLD YOU THE LEVERAGE CONTRACT MUST REPURCHASE IT, OR YOU MUST PAY THE LEVERAGE TRANSACTION MERCHANT THE FULL PURCHASE PRICE FOR THE LEVERAGE CONTRACT, TAKE DELIVERY OF THE LEVERAGE COMMODITY, AND THEN SELL THE LEVERAGE COMMODITY, POSSIBLY AT A LOWER PRICE THAN THE PRICE PAID TO PURCHASE THE LEVERAGE COMMODITY FROM THE LEVERAGE TRANSACTION MERCHANT. YOU SHOULD ALSO BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM A SHORT LEVERAGE CONTRACT, THE LEVERAGE TRANSACTION MERCHANT TO WHICH YOU SOLD THE LEVERAGE CONTRACT MUST RESELL IT TO YOU, OR YOU MUST ACQUIRE THE LEVERAGE COMMODITY IN ORDER TO MAKE DELIVERY TO THE LEVERAGE TRANSACTION MERCHANT, POSSIBLY AT A HIGHER PRICE THAN THE PRICE YOU WILL RECEIVE FROM THE LEVERAGE TRANSACTION MERCHANT.

THERE IS NO MARKET FOR THE LEVERAGE CONTRACT ITSELF OTHER THAN TO HAVE IT REPURCHASED BY OR RESOLD TO THE LEVERAGE TRANSACTION MERCHANT. A LEVERAGE TRANSACTION MERCHANT IS UNDER NO OBLIGATION TO OFFER TO REPURCHASE OR RESELL A LEVERAGE CONTRACT AT ALL TIMES. ALTHOUGH THE LEVERAGE TRANSACTION MERCHANT MUST OFFER TO REPURCHASE ANY LONG LEVERAGE CONTRACT PREVIOUSLY PURCHASED BY A LEVERAGE CUSTOMER AT ANY TIME DURING WHICH THE LEVERAGE TRANSACTION MERCHANT IS OFFERING TO ENTER INTO SUCH PURCHASES BY ITS CUSTOMERS INVOLVING THE SAME LEVERAGE COMMODITY, AND THE LEVERAGE TRANSACTION MERCHANT MUST OFFER TO RESELL ANY SHORT LEVERAGE CONTRACT PREVIOUSLY

SOLD BY A LEVERAGE CUSTOMER AT ANY TIME DURING WHICH THE LEVERAGE TRANSACTION MERCHANT IS OFFERING TO ENTER INTO SUCH SALES BY ITS CUSTOMERS INVOLVING THE SAME LEVERAGE COMMODITY. AS NOTED ABOVE, HOWEVER, A LEVERAGE TRANSACTION MERCHANT HAS COMPLETE DISCRETION IN SETTING THE PRICE AND ANY CHARGES RELATED THERETO.

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF THESE LEVERAGE CONTRACTS AS AN INVESTMENT VEHICLE NOR UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A VIOLATION OF THE COMMODITY EXCHANGE ACT AND THE REGULATIONS THEREUNDER.

(2) Immediately following the statement required by paragraph (a)(1) of this section, a section, captioned "Provisions of Leverage Contract" in at least ten point type, containing the terms and conditions of the leverage contract being offered. This information must be provided in the order specified in paragraphs (a)(2) (i) through (xi) of this section, with a clear demarcation or separation between each item according to the paragraph of the section to which it corresponds, and include:

(i) The duration or expiration date of the leverage contract;
(ii) The distinguishing characteristics of the contract and of the leverage commodity, including, in particular, those characteristics of the leverage commodity enumerated in § 31.4(g)(1)(i)-(iii), (2), and (3) (i) and (ii);

(iii) A description of the following charges for each leverage contract:

(A) Initial charges;
(B) Carrying charges;
(C) Termination charges;
(iv) A description of the bid and ask prices of each leverage contract;

(v) An explanation of the margins applicable to each leverage contract, including, as required, initial margins, minimum margins and maintenance margins;

(vi) A description of the leverage customer's responsibilities with respect to margin calls, including the timing of such calls and, if applicable, the circumstances under which, time after which, and the order in which the leverage transaction merchant may, consistent with § 31.18 liquidate a customer's position in the leverage contract;

(vii) A description of the manner in which a leverage customer may seek to have a leverage contract repurchased or resold by the leverage transaction merchant, including an explanation of the procedure to be followed by the leverage transaction merchant to effect such repurchase or resale and the manner in which the repurchase or resale price is determined;

(viii) A statement to the effect that other persons may be unwilling to buy from the leverage customer the leverage commodity that is deliverable on the leverage contract or, in the case of metal or coins, may be unwilling to buy such metal or coins without first requiring an inspection or assay at the expense of the leverage customer; a statement to the effect that the leverage transaction merchant, in the case of metal or coins, may be unwilling to accept delivery and pay for such metal or coins without first requiring an inspection or assay at the expense of the leverage customer; and a description of any other requirements for the delivery of a leverage commodity by a leverage customer to a leverage transaction merchant in connection with a short leverage contract;

(ix) A clear explanation of any *force majeure* clauses pertaining to each leverage contract;

(x) A description of any material risks not included in the statements required by paragraph (a)(1) of this section; and

(xi) An identification of the commercial or retail cash price series filed in accordance with § 31.8, along with clearly specified premiums and discounts, if applicable, which the leverage customer or prospective leverage customer can use to evaluate a leverage contract and a widely available source from which such price quotes may be obtained on a timely basis.

(3) An illustrative example of a long leverage transaction which includes a calculation of the break-even price in the format specified by the Commission.

(4)(i) The name, address of the main business office, main business telephone number and form of organization of the leverage transaction merchant. If the address of the main business office is a post office box number, the leverage transaction merchant must state where its books and records will be kept;

(ii) The name of each principal of the leverage transaction merchant;

(iii) The business background, for the five years preceding the date of the statement, of:

(A) The leverage transaction merchant; and

(B) Each principal of the leverage transaction merchant.

The leverage transaction merchant must include in the description of the business background of each such person the name and main business of that person's employers, business associations or business ventures and the nature of the person's duties performed for the employers or in connection with the associations or ventures.

(5)(i) A statement whether any principal of the leverage transaction merchant has entered into or intends to enter into long or short leverage contracts for his own account and, if so, whether leverage customers will be permitted to inspect the records of that person's trades; and

(ii) If principals of the leverage transaction merchant will not enter into or do not intend to enter into long or short leverage contracts for their own account, the leverage transaction merchant must so state with respect to each principal.

(6)(i) Any material administrative or civil action involving any activity or conduct, or related to any statute, set forth in Sections 8a(2) or 8a(3) of the Act, or any material criminal action brought within the five years preceding the date of the document against the leverage transaction merchant or any principal of the leverage transaction merchant; and

(ii) If there has been no such action against any of the foregoing persons, the leverage transaction merchant must make a statement to that effect with respect to each such person.

(k)(1) Within 24 hours after the entry into a long leverage contract with a customer, each leverage transaction merchant shall furnish to such customer, by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement in a format specified by the Commission containing:

(i) The following bold-face statement in at least ten point type:
IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT PURCHASED FROM A LEVERAGE TRANSACTION MERCHANT ARE CALCULATED BY SUBTRACTING THE ASK PRICE OF THE LEVERAGE CONTRACT AT THE TIME OF THE CUSTOMER'S

RESCISSION FROM THE ASK PRICE AT WHICH THE LEVERAGE CONTRACT WAS PURCHASED AND WHICH APPEARS ON THIS CONFIRMATION. TO RESCIND THIS CONTRACT SEND A TELEGRAM TO (name and address of LTM) OR YOU MAY TELEPHONE (name of LTM) AT (telephone number). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN AFFIRMATION BY TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE; and

(ii) The following additional information:

(A) The date the leverage contract was entered into;

(B) The transaction identification number;

(C) The name of the leverage commodity;

(D) The expiration date of the leverage contract;

(E) The price at which the leverage commodity was purchased;

(F) The number of contracts covered by the Confirmation Statement;

(G) The total cost of the leverage contracts covered in the Confirmation Statement, which equals the leverage transaction merchant's ask price in dollars per contract multiplied by the number of contracts;

(H) The initial charges, in dollars per contract, incurred by the leverage customer at the time the contract is entered into;

(I) The carrying charges, in dollars per contract, cumulated for one year, based on the charges prevailing at the time the contract is entered into;

(J) The termination charges, in dollars per contract, incurred if the leverage contract is repurchased or liquidated by the leverage transaction merchant or settled by delivery, based on the charges prevailing at the time the contract is entered into;

(K) The bid-ask spread prevailing at the close of business on the day the contract is entered into;

(L) Based upon all of the foregoing, a calculation of the break-even price of the leverage contract and percentage price change to break even;

(M) The initial leverage margin, in dollars per contract, based on the rates or levels prevailing at the time the contract is entered into;

(N) The minimum leverage margin, in dollars per contract, based on the rates or levels prevailing at the time the contract is entered into;

(O) The maintenance leverage margin, in dollars per contract, based on the

rates or levels prevailing at the time the contract is entered into;

(P) The commercial or retail cash price series filed in accordance with § 31.6 available to the leverage customer to evaluate the leverage contract (including any applicable premiums or discounts), and where quotes of this series can be obtained on a timely basis.

(2) Within 24 hours after the entry into a short leverage contract with a customer, each leverage transaction merchant shall furnish to such customer, by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement containing:

(i) The following bold-faced statement in at least ten point type:

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT SOLD TO A LEVERAGE TRANSACTION MERCHANT ARE CALCULATED BY SUBTRACTING THE BID PRICE AT WHICH THE CONTRACT WAS SOLD TO THE LEVERAGE TRANSACTION MERCHANT AND WHICH APPEARS ON THIS CONFIRMATION FROM THE BID PRICE OF THE LEVERAGE CONTRACT AT THE TIME OF THE CUSTOMER'S RESCISSION. TO RESCIND THIS CONTRACT SEND A TELEGRAM TO (name and address of LTM) OR YOU MAY TELEPHONE (name of LTM) AT (telephone number). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN AFFIRMATION BY TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE; and

(ii) Such other information concerning the short leverage contract as is consistent with the information required by § 31.11(k)(1)(ii)(A)-(K) and (M)-(P) to be furnished to customers entering into a long leverage contract.

8. Section 31.12 is amended by revising paragraph (b) to read as follows:

§ 31.12 Segregation.

(b) No leverage customer funds deposited in accordance with paragraph (a) of this section shall be held, disposed

of, used or treated as belonging to the depositing person or any person other than the leverage customers from whom the leverage customer funds were received: *Provided, however*, That leverage customer funds may be used to purchase obligations of the United States, general obligations of any state or of any political subdivision thereof, obligations fully guaranteed as to principal and interest by the United States, or unencumbered warehouse receipts for inventory held in approved contract market depositories or in commercial banks located in the United States which represent cover for leverage contracts purchased by such leverage customers, or may be deposited in a commodity account with a futures commission merchant to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which are permissible cover as described in § 31.8(a) (2) and (3) for leverage contracts entered into by such leverage customers. Any use of leverage customer funds as described in this paragraph (b) shall be made through an account or accounts used for the deposit of leverage customer funds, and proceeds from any sale, liquidation or other disposition of obligations or warehouse receipts obtained by such use shall be redeposited in these accounts. Each person that uses leverage customer funds to purchase obligations or warehouse receipts of the type described in this paragraph (b) shall separately account for and segregate the obligations or warehouse receipts as belonging to leverage customers. The obligations or warehouse receipts shall be deposited with a futures commission merchant, bank or trust company in the United States and shall be deposited under an account name which clearly indicates that it contains obligations or warehouse receipts treated as belonging to leverage customers, segregated as required by this section. Each person so depositing any obligations or warehouse receipts shall obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from the futures commission merchant, bank or trust company wherein the obligations or warehouse receipts have been deposited that the futures commission merchant, bank or trust company has been informed that the obligations or warehouse receipts are being treated by the depositing person as belonging to leverage customers and are being held in accordance with the provisions of this section. The futures commission merchant, bank or trust

company shall allow inspection of such obligations or warehouse receipts at any reasonable time by any representative of the Commission or designated self-regulatory organization, if any. Each person that uses leverage customer funds to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which represent permissible cover for leverage contracts entered into by such leverage customers shall use a commodity account separate from any other commodity account containing futures contracts which do not represent cover. The leverage customer funds deposited in a commodity account with a futures commission merchant to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which represent permissible cover for leverage contracts entered into by such leverage customers shall be deposited under an account name which clearly indicates that it contains obligations treated as belonging to leverage customers, segregated as required by this section. Each person so depositing any leverage customer funds shall obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from the futures commission merchant wherein the leverage customer funds have been deposited that (1) the futures commission merchant has been informed that the commodity account is being treated by the depositing person as belonging to leverage customers and is being held in accordance with the provisions of this section, (2) the customers on whose behalf the account is maintained by the leverage transaction merchant shall not be liable for any margin calls or other required deposits related to such account, and (3) upon liquidation of the open contracts in the account the futures commission merchant's claim in the account balance will be subordinate to that of leverage customers.

9. Section 31.14 is revised to read as follows:

§ 31.14 Recordkeeping.

(a) All books, records and other documents required to be kept by this part shall be kept in accordance with the provisions of § 1.31 of this chapter. In addition, information concerning leverage transactions shall be made available upon request of the Executive Director, the Director of the Division of Trading and Markets, the Director of the Division of Economic Analysis or the Director of the Division of Enforcement,

or other designees, at a time and place and in such form and manner as may be specified in the request.

(b) Each leverage transaction merchant shall:

(1) Keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to leverage contracts, commodity futures, commodity options and cash commodities and furnish true and correct information and reports as to the contents or the meaning thereof when and as requested by any authorized representative of the Commission, designated self-regulatory organization, if any, or the United States Department of Justice. Included among such records shall be: All leverage contract orders; signature cards; journals; ledgers; canceled checks; bank statements; loan agreements; invoices; copies of confirmations; copies of statements of purchase, sale, repurchase, resale, liquidation, rescission and delivery; copies of month-end statements; monthly trial balances, and a monthly listing as described in paragraph (d) of this section; reports, letters and copies of disclosure statements signed by leverage customers as described in § 31.11; promotional material, circulars, memoranda, publications, writings, and all other literature or written advice distributed to leverage customers or prospective leverage customers; and all other records, data and memoranda which have been prepared in the course of the business of the leverage transaction merchant concerning leverage contracts, commodity futures, commodity options, and cash commodities;

(2) Keep a record in permanent form which shall show for each leverage customer's account carried by such leverage transaction merchant: (i) The true name and address of the person for whom such account is carried; (ii) the principal occupation and/or type of business of the person for whom such account is carried; (iii) the name and address of any other person who assumes or purports to assume any financial responsibility for or operational control of such account; and (iv) the names of the persons who have solicited and are responsible for each leverage customer's account.

(c) Each leverage transaction merchant shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger which will show separately for each leverage customer's account all charges against and credits

to such leverage customer's account, including but not limited to all charges and credits for purchases, repurchases, sales, resales, liquidations, rescissions and settlements by delivery of leverage contracts (including the corresponding transaction identification numbers) and all funds transferred, deposited into, or withdrawn from the leverage customer's account.

(2) A record of transactions which will show separately for each leverage customer's account in chronological sequence all leverage contracts entered into with such customer. This record will show for each transaction: The date of the transaction; the commodity involved; a transaction identification number; the maturity date; the number of contracts; whether the transaction represents an initial purchase, initial sale, closing repurchase, closing resale, a liquidating transaction, a rescission or a delivery; and, if a closing or liquidating transaction or a rescission, the total amount realized.

(3) A daily record or journal which will show separately by leverage commodity complete details of all leverage transactions executed on that day, including the person for whom such transaction was made, the leverage commodity and contract involved, the number of leverage contracts, the transaction identification number for each leverage contract, whether the transaction was an initial purchase, repurchase, initial sale, resale, liquidating transaction, rescission or delivery, and the total value of the transaction.

(4) The acknowledgement specified in § 31.11(a).

(5) A record of all notifications under § 31.11(b).

(6) Where reproductions on microfilm of the records required by this paragraph (c) are substituted for hard copy in accordance with the provisions of paragraph (a) of this section, the requirement of paragraphs (c)(1) and (c)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides at such time and place as required by the Commission and at the expense of such person, reproduced copies which show the records as specified in paragraphs (c)(1) and (c)(2) of this section, on request by any representative of the Commission, designated self-regulatory organization or the United States Department of Justice.

(d) Each age transaction merchant shall prepare, as of the close of the last business day of each calendar month, a listing of all open leverage contracts carried for leverage customers. Such

listing shall be by age commodity and contract and separately by long age contracts and short leverage contracts, and shall include the following details with respect to each leverage contract:

- (1) The customer account identification number;
- (2) The name of the leverage commodity and contract;
- (3) The date of execution and the maturity date;
- (4) The transaction identification number;
- (5) The value of the leverage contract when initiated; and
- (6) The unrealized profit or loss on each open leverage contract marked to the market on the basis of the leverage transaction merchant's bid price for a long leverage contract and ask price for a short leverage contract.

10. Section 31.15 is amended by revising paragraphs (a)— and (b) to read as follows:

§ 31.15 Reporting to leverage customers.

Each leverage transaction merchant shall furnish in writing directly to each leverage customer:

(a) Promptly upon the repurchase, resale, liquidation, rescission or delivery of a leverage contract, a statement showing the financial result of the transactions involved, including the gain or loss on the leverage contract as well as the commission and other charges;

(b) As of the close of the last business day of each calendar month or as of any regular monthly date selected a statement which clearly shows:

(1) All leverage contracts which were terminated for or by the leverage customer during the monthly reporting period by leverage commodity and contract, the number of contracts involved, the transaction identification number for each leverage contract, whether the terminating transaction involved repurchase, resale, liquidation, rescission, or delivery, the date the contract was initially entered into, the value of the contract when initiated, the date the contract was terminated, the value of the contract when terminated, and the realized profit or loss on the contract;

(2) The open leverage contract positions carried for leverage customer by leverage commodity and contract, whether the position is a long or short leverage contract, the dates on which such contracts were executed and their maturity dates, the number of contracts, the total value of the contracts when initiated, and the unrealized profit or loss on each such contract marked to the market on the basis of the leverage transaction merchant's bid price for a

long leverage contract and ask price for a short leverage contract.

(3) The net ledger balance carried in the leverage customer's account as of the monthly closing date and a complete accounting of any leverage customer funds held for the leverage customer;

(4) A detailed accounting of all financial charges and credits to the previous ledger balance during the monthly reporting period, including all leverage customer funds received from or disbursed to the leverage customer, and all commissions and fees incidental to the contract which have been charged and received, as well as all realized profits and losses; and

(5) Any securities or other property which the leverage customer has deposited with the leverage transaction merchant that represent leverage customer funds.

The monthly statement must also contain the following bold-faced legend in at least ten-point type: IF YOU BELIEVE YOUR MONTHLY STATEMENT IS INACCURATE YOU SHOULD PROMPTLY CONTACT (name of LTM) AT (telephone number).

11. Section 31.16 is revised to read as follows:

§ 31.16 Monthly reporting requirements.

Each leverage transaction merchant shall file written monthly reports with the Commission's headquarters office in Washington, D.C., by the tenth business day of the month following the month covered by the reports. Reports shall be prepared on CFTC Forms 188A, 188B and 189.

(a) *Forms 188A and 188B.* CFTC Form 188A covers long leverage contracts and CFTC Form 188B covers short leverage contracts. These forms shall show the following information separately for each leverage commodity and contract:

(1) The total number of leverage contracts that are open as of the close of business on the last business day of the month for:

- (i) All customer accounts, and
- (ii) Separately for commercial leverage accounts.

(2) The total number of leverage contracts entered into by leverage customers during the month for:

- (i) All customer accounts, and
- (ii) Separately for commercial leverage accounts.

(3) The total number of leverage contracts which were repurchased or resold by the leverage transaction merchant during the month.

(4) The total number of leverage contracts which were liquidated by the leverage transaction merchant during

the month (i.e., as a result of overdue or unanswered margin calls).

(5) The total number of deliveries on leverage contracts during the month.

(6) The total number of leverage contracts which were rescinded during the month.

(b) *Form 189.* CFTC Form 189 shall show the following information separately for each leverage commodity and each long and short leverage contract: the leverage transaction merchant's last bid price offered and last ask price offered as of the close of business on each business day.

12. Section 31.17 is amended by revising paragraphs (c) and (d) to read as follows:

§ 31.17 Records of leverage transactions.

(c) For the purposes of this section, the term "order" shall include, but not be limited to, any order for the purchase, sale, repurchase, resale, rescission, settlement by delivery, or liquidation of a leverage contract.

(d) Each leverage transaction merchant shall establish and maintain a record of the bid and ask prices of each leverage contract on each leverage commodity that the leverage transaction merchant offers to sell or sells, or offers to purchase or purchases. The record shall include the times these prices were in effect to the nearest ten seconds.

13. Section 31.18 is amended by revising paragraph (b) to read as follows:

§ 31.18 Margin calls.

(b) A leverage transaction merchant shall allow a leverage customer a reasonable time after contact is effected in which to respond to a margin call. Twenty-four hours, excluding Saturdays, Sundays, and holidays, will be a reasonable time; *Provided, however,* that in the event the leverage customer's leverage account equity falls below 50 percent of aggregate minimum margin with respect to the leverage contracts therein, the leverage transaction merchant may liquidate sufficient contracts to restore minimum margin without prior notice; *Provided, further,* That the leverage customer must be notified of such liquidation within no more than 24 hours thereafter and must be permitted to re-establish his contract for a period of 5 business days at the then prevailing bid price in the case of a long leverage contract and at the then prevailing ask price in the case of a short leverage contract, without commissions, fees or other mark-ups or charges. If a termination charge was

assessed by the leverage transaction merchant upon liquidation of a contract in accordance with the first proviso of this paragraph, such a charge must be rescinded upon re-establishment of the contract in accordance with the second proviso of this paragraph.

14. Section 31.19 is amended by revising paragraphs (a) and (b) to read as follows:

§ 31.19 Unlawful representations.

It shall be unlawful for any person:

(a) Required to be registered with the Commission in accordance with §§ 3.17 and 3.18 of this chapter expressly or impliedly to represent that the commission, by registering that person or by registering the leverage commodity which underlies contracts offered for sale or purchase, or sold or purchased by that person, or otherwise, has directly or indirectly approved that person, the person's method of operation, or any leverage commodity or leverage contract solicited or accepted by that person;

(b) To represent in writing that it is registered with the Commission or that it is offering any leverage commodity registered with the Commission without also stating in writing in connection with that representation that the Commission, by registering that person or the leverage commodity which underlies contracts offered for sale or purchase or sold or purchased by that person, has not directly or indirectly approved the person, the person's method of operation, or any leverage commodity or contract solicited or accepted by that person; or

15. Section 31.23 is amended by revising paragraph (a) to read as follows:

§ 31.23 Limited right to rescind first leverage contract.

(a) A leverage customer who is entering a leverage contract or contracts for the first time with a particular leverage transaction merchant may rescind such contract or contracts during a period of not less than three business days from and including the day on which the leverage customer receives the Confirmation Statement pursuant to the following provisions:

(1) Such customer may be assessed actual price losses accruing to the customer's position from the time at which the customer entered into a leverage contract to the time that the leverage contract was rescinded. Such losses do not extend to any other charges or fees, such as account

initiation, carrying, margin or account termination;

(2) In the case of a leverage customer whose initial leverage transaction was a purchase of a leverage contract from a leverage transaction merchant (long leverage contract), actual losses accruing to the position may be calculated only by subtracting the ask price of the leverage contract offered by the leverage transaction merchant at the time when the leverage contract was rescinded from the ask price at which the leverage contract was purchased by the leverage customer and which appears on the Confirmation Statement. In the case of a leverage customer whose initial leverage transaction was a sale of a leverage contract to a leverage transaction merchant (short leverage contract), actual losses are calculated by subtracting the bid price at which the leverage contract was sold by the leverage customer and which appears on the Confirmation Statement from the bid price of the leverage contract offered by the leverage transaction merchant at the time when the leverage contract was rescinded.

(3) Such customer may rescind the contract by telegram sent to the leverage transaction merchant at the address provided on the confirmation statement, or by telephone to a telephone number provided by the leverage transaction merchant on the Confirmation Statement with immediate written affirmation of rescission by telegram, certified letter or at least equivalent means.

Issued in Washington, D.C., on December 21, 1984, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Note.—This form will not be carried in the Code of Federal Regulations.

CFTC FORM 2-FR (Revised 10/84)

[OMB No. 3038-0029]

General Instructions

This form contains the financial statements and schedules which are required to be filed by each leverage transaction merchant, or applicant therefor, in accordance with the Commission's regulations. These instructions, and any other instructions issued from time to time, must be used in preparing this form and constitute a part of this form.

The heading of each page includes a space for the firm's employer identification number. Use the employer identification number ("EIN") assigned by the Internal Revenue Service.

The references in this form to §§ 1.12, 1.16, 1.17, 1.31, 31.4, 31.7, 31.8, 31.9, 31.11,

31.12, 31.13, 31.14 and 145.9 are to the Commission's regulations contained in 17 CFR Chapter I. The reference to § 240.15c3-1 is to the Securities and Exchange Commission's regulations contained in 17 CFR Chapter II.

Before completing this form, the applicant or registrant should be familiar with the following sections of the Commission's regulations:

(1) 1.12—Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(2) 1.16—Qualifications and reports of accountants (if this report is required to be certified by an independent public accountant).

(3) 1.17—Minimum financial requirements for futures commission merchants and introducing brokers.

(4) 1.31—Books and records; keeping and inspection.

(5) 31.4—Definitions [relating to leverage transactions].

(6) 31.7—Maintenance of minimum financial requirements by leverage transaction merchants.

(7) 31.8—Cover of leverage contracts.

(8) 31.9—Minimum financial requirements [for leverage transaction merchants].

(9) 31.11—Disclosure [by leverage transaction merchants].

(10) 31.12—Segregation [by leverage transaction merchants].

(11) 31.13—Financial reports of leverage transaction merchants.

(12) 31.14—Recordkeeping [by leverage transaction merchants].

(13) 145.9—Petition for confidential treatment of certain information submitted to the Commission.

The terms "current assets," "liabilities," "net capital," and "adjusted net capital" are all defined terms which may be found in Section 31.9 of the Commission's regulations. Those definitions largely incorporate by reference the definitions of those terms contained in Section 1.17 of the Commission's regulations, and leverage transaction merchants should be familiar with that section.

Unaudited Report

Each unaudited report filed pursuant to Section 31.13(f) must be completed in accordance with the instructions to the form and include the following:

(a) A Statement of Financial Condition;

(b) A Statement of the Computation of the Minimum Capital Requirements;

(c) A Schedule of Leverage Contracts and Coverage Provided;

(d) A Statement of Changes in Ownership Equity;

(e) A Schedule of Segregation Requirements and Funds on Deposit in Segregation; and

(f) Any additional information that may be necessary to make the required statements not misleading.

Audited Report

Each report certified by an independent public accountant must be completed in accordance with the instructions to the form and contain the statements set forth above as well as the following statements all completed in accordance with §§ 1.16 and 31.13 of the regulations:

(a) A Statement of Income (Loss);

(b) A Statement of Changes in Financial Position;

(c) A Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement;

(d) Accountant's report covering the Form 2-FR and all supporting schedules included as part of the report;

(e) Accountant's supplemental report of material inadequacies; and

(f) Appropriate footnote disclosures.

Each item on page 1 of the report form must be answered completely and the attestation must be signed and dated. This form must be based on the applicant's or registrant's accounting records. All records which support amounts shown in this report must be retained in accordance with § 1.31 of the Commission's regulations.

The report must be prepared in conformity with generally accepted accounting principles (except where otherwise indicated by the regulations) applied on a basis consistent with that of the preceding report and must include all informative disclosures which are necessary to make the required statements and schedules not misleading. The report must be prepared on the accrual basis of accounting. If no response is made to an item or subdivision thereof, it will be assumed that the applicant or registrant has nothing to report.

Freedom of Information Act

This form generally is considered by the Commission to be a public record, copies of which may be obtained upon written request to the Commission's Office of Public Information in Washington, D.C. If a registrant or applicant follows the procedures set forth in § 31.13(m) of the regulations for separate binding of certain portions of this form, only such separately bound portions will be made available to the public. The separately bound public

portion of the form must include: (1) The Statement of Financial Condition; (2) the Statement of the Computation of the Minimum Capital Requirements; (3) the Schedule of Leverage Contracts and Coverage Provided; (4) the Schedule of Segregation Requirements and Funds on Deposit in Segregation; and (5) the independent public accountant's opinion, if the report is audited. Leverage transaction merchants are also reminded that § 31.11(m) requires them to furnish, upon request, to all leverage customers whose leverage contracts have not matured or are otherwise still open, and to prospective customers who are being solicited to enter leverage contracts with it, a true copy of the quarterly unaudited or annual audited financial statement most recently filed with the Commission pursuant to § 31.13, except that the portions of those statements which will generally be accorded non-public treatment by the Commission need not be so furnished.

Under the provisions of the Freedom of Information Act (5 U.S.C. 552), the Commission may disclose to third parties portions of the "non-public" information in the report under the following circumstances: (1) In connection with matters in litigation; (2) in connection with Commission investigations; (3) where the information is furnished to regulatory, self-regulatory and law enforcement agencies to assist them in meeting responsibilities assigned to them by law; (4) where disclosure is required under the Freedom of Information Act; and (5) in other circumstances in which withholding of such information appears unwarranted.

If the applicant or registrant files a petition for confidential treatment of this information, § 145.9 of the Commission's regulations affords the applicant or registrant with the right to notice and a right to appeal any Commission staff decision to disclose this information pursuant to a request for information under the Freedom of Information Act. In addition, if the applicant or registrant believes that the placing of any other information submitted on or with this form in the Commission's public files would constitute an unwarranted invasion of the applicant's or registrant's personal privacy or would reveal sensitive business information, the registrant or applicant may petition the Commission to treat such other information as nonpublic pursuant to § 145.9 in response to requests under the Freedom of Information Act.

BILLING CODE 6351-01-M

FORM 2-FR
(Revised 10/84)

OMB No. 3038-0029

Name of Registrant or Applicant	Firm Employer ID No.
Address of Principal Place of Business	Name of Person to Contact Concerning This Report
(City) (State) (Zip Code)	Telephone No. of Contact ()

- Report for the period beginning _____ and ending _____
- Name of Designated Self-Regulatory Organization Supervising Registrant _____
- If an audited report, identify independent public accountant expressing an opinion thereon:
NAME _____
ADDRESS _____
(Number and Street)
(City) (State) (Zip Code)

The leverage transaction merchant, or applicant for registration therefor, submitting this Form and its attachments and the person whose signature appears below represent that, to the best of their knowledge, all information contained therein is true, correct and complete. It is understood that all required items, statements and schedules are integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted. It is further understood that any intentional misstatements or omissions of facts constitute Federal Criminal Violations (see 18 U.S.C. 1001).

Signed this _____ day of _____ 19 ____.

Manual signature _____
Type or Print Name _____

☐ Sole Proprietor

☐ Chief Financial Officer

☐ General Partner

☐ Chief Executive Officer

Firm: _____ / Firm Employer ID No. _____

FORM 2-FR

STATEMENT OF FINANCIAL CONDITION

AS OF ____/____/____

Assets

	<u>Current</u>	<u>Non-Current</u>	<u>Total</u>
1. Cash:			
A. Cash	\$ _____		\$ _____
B. Cash segregated for the benefit of leverage customers.	_____		_____
C. Other restricted cash.	_____	\$ _____	_____
2. Receivables from and deposits with clearing organizations:			
A. Securities transactions.	_____		_____
B. Firm commodity transactions	_____		_____
3. Receivables from other futures commission merchants and brokers:			
A. Firm commodity transactions.	_____		_____
B. Securities transactions (attach details).	_____		_____
C. Allowance for doubtful accounts	() _____		() _____
D. Security deposit		_____	_____
4. Receivables from leverage customers:			
A. Debit and deficit accounts	_____	_____	_____
B. Allowance for doubtful accounts	() _____	() _____	() _____
5. Receivables from proprietary leverage accounts:			
A. Debit and deficit accounts of general partners.	_____	_____	_____
B. Allowance for doubtful accounts	() _____	() _____	() _____

6. Other receivables and advances:			
A. Merchandising	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Taxes receivable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Insurance claims	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Dividends and interest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Notes receivable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Advances on cash commodities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Receivables from employees and leverage representatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Other (itemize here or on a separate page)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Allowance for doubtful accounts	() <input type="checkbox"/>	() <input type="checkbox"/>	() <input type="checkbox"/>
7. Securities purchased under agreement to resell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Inventories of securities—readily marketable, at market value:			
A. Firm owned	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Customer owned in segregation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Investment of segregated funds.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Inventories of cash commodities, raw materials, work in progress and finished goods			
A. Covered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Not covered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Segregated -- cover for leverage contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Securities owned not readily marketable at estimated fair value	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Partners' individual securities accounts at market value	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Secured demand notes (market value of collateral \$ <input type="checkbox"/> —safety factor charges applicable to such collateral \$ <input type="checkbox"/>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Guarantee deposits with and stock in clearing organizations (at cost)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Exchange memberships (market value \$ <input type="checkbox"/>) at cost	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. Investments in and receivables from affiliates and subsidiaries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Plant, property, equipment and capitalized leases (at cost net of accumulated depreciation and amortization of \$_____)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Other assets:			
A. Prepaid expenses and deferred charges		<input type="checkbox"/>	<input type="checkbox"/>
B. Miscellaneous (itemize here or on a separate page)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Total Assets.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Firm:

/ Firm Employer ID No.

FORM 2-FR

STATEMENT OF FINANCIAL CONDITION

AS OF ____/____/____

Liabilities & Ownership EquityLiabilities

19. Loans payable:
- A. Secured by warehouse receipts.
 - B. Secured by other property . .
 - C. Unsecured

\$

20. Securities sold under repurchase agreement

--	--

21. Payable to clearing organizations:
- A. Securities accounts.
 - B. Firm commodity accounts. . .

22. Payable to other futures commission merchants or brokers:
- A. Payables relating to securities transactions (attach details)
 - B. Payables relating to firm commodity transactions . . .

23. Payable to leverage customers . .

--	--

24. Payable to proprietary accounts:
- A. Securities accounts
 - B. Commodity and leverage accounts of general partners.

25. Securities sold not yet purchased at market value—including arbitrage

--	--

26. Accounts payable, accrued liabilities and expenses:
- A. Drafts payable
 - B. Accounts payable
 - C. Income taxes payable
 - D. Deferred income taxes
 - E. Accrued expenses and other liabilities

F. Salaries, wages and commissions payable	<input type="text"/>	<input type="text"/>
G. Advances against commodities	<input type="text"/>	<input type="text"/>
H. Notes, mortgages and other payables due within twelve months of the date of this statement (see item 27) . .	<input type="text"/>	<input type="text"/>
I. Other (itemize here or on a separate page)	<input type="text"/>	<input type="text"/>
27. Notes, mortgages and other payables not due within twelve months of the date of this statement:		
A. Unsecured	<input type="text"/>	<input type="text"/>
B. Secured	<input type="text"/>	<input type="text"/>
28. Liabilities subordinated to claims of general creditors:		
A. Subject to a satisfactory subordination agreement . .	<input type="text"/>	<input type="text"/>
B. Not subject to a satisfactory subordination agreement . .	<input type="text"/>	<input type="text"/>
29. Total liabilities	<input type="text"/>	<input type="text"/>
<u>Ownership Equity</u>		
30. Sole proprietorship	<input type="text"/>	<input type="text"/>
31. Partnership:		
A. Partnership contributed and retained capital	<input type="text"/>	<input type="text"/>
B. Additional capital per partnership agreement (equities in partners' trading accounts, etc.)	<input type="text"/>	<input type="text"/>
32. Corporation:		
A. Preferred stock	<input type="text"/>	<input type="text"/>
B. Common stock	<input type="text"/>	<input type="text"/>
C. Additional paid in capital .	<input type="text"/>	<input type="text"/>
D. Retained earnings	<input type="text"/>	<input type="text"/>
E. Sub-total	<input type="text"/>	<input type="text"/>
F. Less capital stock in treasury	<input type="text"/>	<input type="text"/>
33. Total ownership equity	<input type="text"/>	<input type="text"/>
34. Total liabilities and ownership equity	<input type="text"/>	<input type="text"/>

Firm:

/ Firm Employer ID No.

FORM 2-FR

STATEMENT OF THE COMPUTATION OF THE MINIMUM CAPITAL REQUIREMENTS

AS OF ____/____/____

Net Capital

1. Current assets - Item 18* \$ _____
2. Adjustments to current assets:
- A. Segregated assets (to the extent liabilities are deducted in 4(B) below)** . \$ _____
- B. (Increase)-decrease to clearing organization stock to reflect margin value . . . _____
- C. Total deductions () _____
- D. Net current assets \$ _____
3. Total liabilities - Item 29* . . . _____
4. Deduct:
- A. Liabilities subject to satisfactory subordination agreements - Item 28A* . . . _____
- B. Equities in leverage customers' accounts** . . . _____
- C. Certain deferred income tax liability (see regulation 1.17(c) (4) (iv)) . . . _____
- D. Certain current income tax liability (see regulation 1.17(c) (4) (v)) . . . _____
- E. Long term debt pursuant to regulation 1.17(c) (4) (vi) . . . _____
- F. Total deductions () _____
- G. Adjusted liabilities _____
5. Net capital \$ _____

Charges to Net Capital

6. Excess of advances paid on cash commodity contracts over 95% of the market value of commodities covered by such contracts \$ _____

* References are to item numbers on the Statement of Financial Condition.

** Item #2A must equal Item #4B.

7. Five percent (5%) of the market value of inventories covered by open futures contracts or commodity options. (See Note below).	<input type="text"/>	<input type="text"/>
8. Twenty percent (20%) of the market value of uncovered inventories. (See Note below)	<input type="text"/>	<input type="text"/>
9. Ten percent (10%) of the market value of commodities involved in fixed price commitments and forward contracts which are covered by open futures contracts or commodity options	<input type="text"/>	<input type="text"/>
10. Twenty percent (20%) of the market value of commodities involved in fixed price commitments and forward contracts which are not covered by open futures contracts or commodity options	<input type="text"/>	<input type="text"/>
11. Charges as specified in §240.15c3-1(c)(2)(vi) and (vii) (or, for securities brokers or dealers only, §240.15c3-1(f)) against securities:		
A. Securities owned:	<u>Assets</u>	<u>Charge</u>
	<u>Market Value</u>	
(a) Bankers' acceptances, certificates of deposit and commercial paper . . . \$	<input type="text"/>	<input type="text"/>
(b) U.S. and Canadian government obligations . . .	<input type="text"/>	<input type="text"/>
(c) State and Municipal government obligations . . .	<input type="text"/>	<input type="text"/>
(d) Corporate obligations . . .	<input type="text"/>	<input type="text"/>
(e) Stocks and warrants . . .	<input type="text"/>	<input type="text"/>
(f) Arbitrage	<input type="text"/>	<input type="text"/>
(g) Other securities	<input type="text"/>	<input type="text"/>
(h) Total (a) - (g) \$	<input type="text"/>	<input type="text"/>
B. Investment of segregated funds	<input type="text"/>	<input type="text"/>
C. Total A+B	<input type="text"/>	<input type="text"/>

NOTE: There is no charge applicable to inventories registered as deliverable on a contract market and which are covered by futures contracts; nor is any charge applicable against inventories representing cover for leverage contracts.

12. Charges on securities options as specified in §240.15c3-1, Appendix A ☐
13. Charges against open contractual commitments as specified in §240.15c3-1(c)(2)(viii) ☐
14. Undermargined leverage customer accounts — amount in each account required to meet maintenance margin requirements less the amount of current margin calls in that account ☐
15. Uncovered open futures and commodity option contracts in proprietary accounts (unless such futures or exchange-traded options represent cover for leverage contracts entered into by the leverage transaction merchant, in which case there is no charge) — percentage of margin requirements applicable to such contracts. ☐
 Less: equity in proprietary accounts included in liabilities (p.5, line 24B) (☐) ☐
16. A. Ten percent (10%) of the market value of commodities which are the subject of commodity options not traded on a contract market carried long by the applicant or registrant which has value and such value increased adjusted net capital (this charge is limited to the value attributed to such options) . . . ☐
- B. Commodity options which are traded on contract markets and carried long in proprietary accounts. Charge is the same as would be applied if applicant or registrant was the grantor of the options (this charge is limited to the value attributed to such options) ☐
17. Five percent (5%) of all unsecured receivables from unregistered futures commission merchants or securities brokers or dealers . . ☐
18. Secured demand note deficiency . ☐

19. For securities brokers or dealers
all other deductions specified
in §240.15c3-1

Net Capital Computation

20. Total charges

21. Adjusted net capital

22. Net capital required:

- A. Market value of the physical
commodities underlying each
uncovered leverage contract
entered into by the leverage
transaction merchant*

- B. 20% of A

- C. Enter \$2,500,000 plus B

23. Excess net capital (Item 21 less
Item 22C)

24. Enter 120% of line 22C. This is
your early warning capital level.
If this amount is greater than
the amount on line 21, you must
immediately notify your DSRO and
the Commission and begin filing
monthly financial reports pursuant
to regulation §31.7(b).

*Indicate below the cash price series used, by commodity, to compute the
value in Item 22A

Firm:

/ Firm Employer ID No.

FORM 2-FR

SCHEDULE OF COVERAGE REQUIREMENTS AND COVERAGE PROVIDED

PHYSICAL COMMODITY SUBJECT TO A LONG LEVERAGE CONTRACT	Platinum	Gold Bullion	Bulk Gold Coins	Silver Bullion	Bulk Silver Coins
1. Quantity of physical commodities subject to long leverage contracts carried in leverage customers' accounts (oz., lbs., etc.)					
2. Coverage required — Enter 90% of line 1					
3. Coverage provided:					
A. Futures and options:					
i. Quantity of physical commodities subject to futures contracts . . .					
ii. Quantity of physical commodities subject to exchange-traded options.					
B. Quantity of inventory* (this must equal at least 25% of line 1 — if it does not, see regulation §31.8(b))					
C. Other (describe on a separate sheet)					
D. Total (sum of A, B, and C)					
4. Excess (insufficiency) of coverage (3D minus 2). If there is an insufficiency, see regulation §31.8(b) . . .					

* The inventory appearing on this line, if encumbered, may not be encumbered in excess of 70 percent of its market value. See regulation §31.8(a)(2)(i) and (ii).

NOTE: A leverage transaction merchant's obligation to cover leverage contracts purchased by leverage customers is separate and distinct from its obligation to cover leverage contracts sold by leverage customers. In other words, a leverage transaction merchant cannot use short leverage contracts to cover long leverage contracts, or vice versa.

Firm: _____	/ Firm Employer ID No. _____
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FORM 2-FR

SCHEDULE OF COVERAGE REQUIREMENTS AND COVERAGE PROVIDED

PHYSICAL COMMODITY SUBJECT TO A LONG LEVERAGE CONTRACT	Copper	British Pound	Deutsche Mark	Japanese Yen	Swiss Franc
1. Quantity of physical commodities subject to long leverage contracts carried in leverage customers' accounts (oz., lbs., etc.)					
2. Coverage required — Enter 90% of line 1					
3. Coverage provided:					
A. Futures and options:					
i. Quantity of physical commodities subject to futures contracts . . .					
ii. Quantity of physical commodities subject to exchange-traded options.					
B. Quantity of inventory* (this must equal at least 25% of line 1 — if it does not, see regulation §31.8(b))					
C. Other (describe on a separate sheet)					
D. Total (sum of A, B, and C)					
4. Excess (insufficiency) of coverage (3D minus 2). If there is an insufficiency, see regulation §31.8(b) . . .					

* The inventory appearing on this line, if encumbered, may not be encumbered in excess of 70 percent of its market value. See regulation §31.8(a)(2)(i) and (ii).

Firm:

/ Firm Employer ID No.

FORM 2-FR

SCHEDULE OF COVERAGE REQUIREMENTS AND COVERAGE PROVIDED

PHYSICAL COMMODITY SUBJECT TO A SHORT LEVERAGE CONTRACT	Platinum	Gold Bullion	Bulk Gold Coins	Silver Bullion	Bulk Silver Coins
1. Quantity of physical commodities subject to short leverage contracts carried in leverage customers' accounts (oz., lbs., etc.)					
2. Coverage required — Enter 90% of line 1					
3. Coverage provided:					
A. Futures and options:					
i. Quantity of physical commodities subject to futures contracts . . .					
ii. Quantity of physical commodities subject to exchange-traded options.					
B. Other (describe on a separate sheet)					
C. Total (sum of A and B) . . .					
4. Excess (insufficiency) of coverage (3C minus 2). If there is an insufficiency, see regulation §31.8(b) . . .					

NOTE: A leverage transaction merchant's obligation to cover leverage contracts purchased by leverage customers is separate and distinct from its obligation to cover leverage contracts sold by leverage customers. In other words, a leverage transaction merchant cannot use short leverage contracts to cover long leverage contracts, or vice versa.

Firm: _____	/ Firm Employer ID No. _____
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FORM 2-FR

SCHEDULE OF COVERAGE REQUIREMENTS AND COVERAGE PROVIDED

PHYSICAL COMMODITY SUBJECT TO A SHORT LEVERAGE CONTRACT	Copper	British Pound	Deutsche Mark	Japanese Yen	Swiss Franc
1. Quantity of physical commodities subject to short leverage contracts carried in leverage customers' accounts (oz., lbs., etc.)					
2. Coverage required — Enter 90% of line 1					
3. Coverage provided:					
A. Futures and options:					
i. Quantity of physical commodities subject to futures contracts . . .					
ii. Quantity of physical commodities subject to exchange-traded options.					
B. Other (describe on a separate sheet)					
C. Total (sum of A and B) . . .					
4. Excess (insufficiency) of coverage (3C minus 2). If there is an insufficiency, see regulation §31.8(b) . . .					

Firm:

/ Firm Employer ID No.

FORM 2-FR

STATEMENT OF INCOME (LOSS)

FOR THE PERIOD FROM _____ THROUGH _____

Revenues

1. Merchandising activities:

- A. Net sales
- B. Cost of goods sold
- C. Gross income from sales . .

\$ _____

() _____

\$ _____

2. Leverage commissions.

3. Leverage maintenance fees

4. Firm trading accounts:

- A. Realized commodity futures
and options
- B. Unrealized commodity futures
and options
- C. Realized security and
security options
- D. Unrealized security and
security options

5. Interest and dividends:

- A. Interest earned on invest-
ments of leverage customers'
segregated funds
- B. Interest earned on leverage
customer debit balances. . .
- C. Other interest and dividends

6. Other income (itemize here or
on a separate page)

7. Total revenue

\$ _____

Expenses

8. Commissions

9. Employee compensation and benefits
(exclusive of commissions) . . .

10. Occupancy and equipment rental .

11. Advertising and promotional
activities

12. Communications	<input type="text"/>
13. Bad debt expense:	
A. Leverage accounts.	<input type="text"/>
B. Merchandising	<input type="text"/>
C. Other	<input type="text"/>
14. Trade Errors:	
A. Customer Accounts	
B. Other	<input type="text"/>
15. Interest	<input type="text"/>
16. Warehousing expense	<input type="text"/>
17. Other expenses (itemize here or on a separate page)	<input type="text"/>
18. Total expenses	\$ <input type="text"/>
19. Income (loss) before income taxes and items below	<input type="text"/>
20. Income tax expense	<input type="text"/>
21. Minority interest in income of consolidated subsidiaries	<input type="text"/>
22. Equity in earnings of unconsol- idated subsidiaries less appli- cable tax	<input type="text"/>
23. Income (loss) before extra- ordinary items	<input type="text"/>
24. Extraordinary gains (loss), less applicable tax	<input type="text"/>
25. Cumulative effect of changes in accounting principles, less applicable tax	<input type="text"/>
26. Net income (loss)	\$ <input type="text"/>

STATEMENT OF CHANGES IN FINANCIAL POSITION

The statement may be in any format which is relevant, but must be in accordance with generally accepted accounting principles.

Firm:

/ Firm Employer ID No.

FORM 2-FR

STATEMENT OF CHANGES IN OWNERSHIP EQUITY

FOR THE PERIOD FROM _____ THROUGH _____

1. Total ownership equity as previously reported \$
2. Net income (loss) for period
3. Other additions to capital (explain below)
4. Dividends ()
5. Other deductions from capital (including partner and proprietary withdrawals) (explain below) ()
6. Balance — to agree with Item 33 on the current Statement of Financial Condition . . \$

Date	Explanation	Addition (Deduction) Amount
		\$

SUPPLEMENTAL QUESTION

Do the amounts reported as ownership equity or liabilities subordinated to the claims of general creditors include any amounts expected to be withdrawn or maturing within the next six months? YES ☐ NO ☐.

If yes, furnish a statement giving full particulars.

Firm:

/ Firm Employer ID No.

FORM 2-FR

SCHEDULE OF SEGREGATION REQUIREMENTS AND FUNDS

IN SEGREGATION AS OF ____/____/____

LEVERAGE CUSTOMER FUNDS

SEGREGATION REQUIREMENTS

1. Net ledger balance:
 - A. Cash
 - B. Securities (at market)
2. Net unrealized profit (loss) in leverage customers' open leverage contracts.
3. Net equity (deficit) (total of 1 and 2)
4. Add accounts liquidating to a deficit and accounts with debit balances with no open contracts . .
5. Amount required to be segregated (total of 3 and 4)

\$		

FUNDS IN SEGREGATION

6. Funds on deposit in segregated leverage customer accounts:

	<u>BANKS</u>	<u>FOMs</u>	
A. Cash			
B. Unrealized gain (loss) on open futures and exchange-traded option contracts			
C. Securities:			
i. Investments			
ii. Held for particular customers			
D. Unencumbered inventory			
E. Amount of funds in segregation (total of A,B,C, and D)			
7. Excess (insufficiency) of funds in segregation (5 minus 6.E)			

AUTHORITY: Sections 8a, 17 and 19 of the Commodity Exchange Act

(7 U.S.C. 12a, 21 and 23).

INSTRUCTIONS FOR PREPARING AND FILING CFTC FORM 188A ON LONG LEVERAGE CONTRACTS

Leverage Transaction Merchants

(See Part 31 of the Regulations under the Commodity Exchange Act)

NOTICE: Failure to file a report required by the Commodity Exchange Act and the regulations thereunder or the filing of a false or fraudulent report may be a basis for administrative action under 7 U.S.C. Sec. 9, and may be punishable by fine or imprisonment, or both, under 7 U.S.C. Sec. 13 or 18 U.S.C. Sec. 1001.

Report Date—The last business day of each calendar month.

Who Should Report—Each person registered as a leverage transaction merchant who has entered into a leverage transaction on a long leverage contract with a customer during the month preceding the report date ("reporting month") or has open long leverage contracts with customers as of the close of business on the report date.

When to Report—The report shall be submitted to the Commodity Futures Trading Commission no later than the tenth business day following the report date.

Where to Report—The report shall be submitted to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attention: Division of Economic Analysis.

What to Report—Report all customer transactions and open long contracts separately, by each type of leverage contract traded on a registered leverage commodity as follows:*

1. The number of open long contracts as of the close of business on the report date held by:
 - a. All customers.
 - b. Commercial enterprises (i.e., producers, processors, commercial users or merchants which, as part of their business, handle the commodity which is the subject of the leverage contract or the products or by-products thereof).
2. The total number of long leverage contracts purchased by leverage customers during the month for:
 - a. All customers.
 - b. Commercial enterprises.
3. The total number of long leverage contracts which were repurchased by leverage transaction merchants during the month.
4. The total number of long leverage contracts which were liquidated by the leverage transaction merchants during the month (i.e., as a result of overdue or unanswered margin calls).
5. The total number of long leverage contracts on which deliveries were taken during the month.
6. The total number of long leverage contracts which were rescinded during the month.

*For reporting purposes, long leverage contracts on the same leverage commodity are different types if they have different maturities. In accordance with the Commission's regulations regarding the registration of leverage commodities, different leverage commodities specify different delivery units, i.e., 100 oz. gold bullion and one kilo gold bullion are different leverage commodities as are different grades of the same commodity.

CFTC Form 1888 (10-84)
Replaces CFTC Form 188

OMB No. 3038-0029

COMMODITY FUTURES TRADING COMMISSION
LEVERAGE TRANSACTION-MERCHANT'S REPORT ON SHORT LEVERAGE CONTRACTS[illegible]

**INSTRUCTIONS FOR PREPARING AND FILING CFTC FORM 188B
ON SHORT LEVERAGE CONTRACTS**

Leverage Transaction Merchants

(See Part 31 of the Regulations under the Commodity Exchange Act)

NOTICE. Failure to file a report required by the Commodity Exchange Act and the regulations thereunder or the filing of a false or fraudulent report may be a basis for administrative action under 7 U.S.C. Sec. 9, and may be punishable by fine or imprisonment, or both, under 7 U.S.C. Sec. 13 or 18 U.S.C. Sec. 1001.

Report Date—The last business day of each calendar month.

Who Should Report—Each person registered as a leverage transaction merchant who has entered into a leverage transaction on a short leverage contract with a customer during the month preceding the report date ("reporting month") or has open short leverage contracts with customers as of the close of business on the report date.

When to Report—The report shall be submitted to the Commodity Futures Trading Commission no later than the tenth business day following the report date.

Where to Report—The report shall be submitted to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attention: Division of Economic Analysis.

What to Report—Report all customer transactions and open short contracts separately, by each type of leverage contract traded on a registered leverage commodity as follows:*

1. The number of open short contracts as of the close of business on the report date held by:
 - a. All customers.
 - b. Commercial enterprises (i.e., producers, processors, commercial users or merchants which, as part of their business, handle the commodity which is the subject of the leverage contract or the products or by-products thereof).
2. The total number of short leverage contracts sold to leverage customers during the month for:
 - a. All customers.
 - b. Commercial enterprises.
3. The total number of short leverage contracts which were resold to leverage transaction merchants during the month.
4. The total number of short leverage contracts which were liquidated by the leverage transaction merchant during the month (i.e., as a result of overdue or unanswered margin calls).
5. The total number of short leverage contracts on which deliveries were made during the month.
6. The total number of short leverage contracts which were rescinded during the month.

*For reporting purposes, short leverage contracts on the same leverage commodity are different types if they have different maturities. In accordance with the Commission's regulations regarding the registration of leverage commodities, different leverage commodities specify different delivery units, i.e., 100 oz. gold bullion and one kilo gold bullion are different leverage commodities as are different grades of the same commodity.

INSTRUCTIONS FOR PREPARING AND FILING CFTC FORM 189 ON LEVERAGE CONTRACTS

Leverage Transaction Merchants

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Report Date—The last business day of each calendar month.

Who Should Report—Each person registered as a leverage transaction merchant who has entered into a leverage transaction with a customer during the month preceding the report date ("reporting month") or has open leverage contracts with customers as of the close of business on the report date.

When to Report—The report shall be submitted to the Commodity Futures Trading Commission no later than the tenth business day following the report date.

Where to Report—The report shall be submitted to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attention: Division of Economic Analysis.

What to Report—Report by each type of leverage contract traded on each registered leverage commodity the last bid price offered and the last ask price offered as of the close of business of each business day.*

*For reporting purposes, leverage contracts on the same leverage commodity are different types if they have different maturities. In accordance with the Commission's regulations regarding the registration of leverage commodities, different leverage commodities specify different delivery units, i.e., 100 oz. gold bullion and one kilo gold bullion are different leverage commodities as are different grades of the same commodity.